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I N D E X

EXAMINATIONS	PAGE
<b>DONNA GRAHAM</b>	
DIRECT EXAMINATION BY MR. RUSS	141

E X H I B I T S

Exhibit No.	Description	Page
	Plaintiffs' Exhibit 353 in evidence.	170
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	Plaintiff's Exhibit RX 73 in evidence.	202

1 (PROCEEDINGS held in open court before The Honorable  
2 ZAHID N. QURAIISHI, United States District Judge, on May 7,  
3 2024, at 9:00 a.m.)

4 THE DEPUTY COURT CLERK: All rise.

5 THE COURT: All right, folks. You may be seated.

6 Good morning, everybody. Let's just have appearances  
7 once this morning. Like I said, we're going to do that every  
8 morning, just so I have a record of who's who at counsel  
9 table, but let's just have appearances on day two, beginning  
10 with Relators.

11 MR. MARKETOS: Good morning, Your Honor.  
12 Pete Marketos for the Relators.

13 MR. RUSS: Good morning, Your Honor. Josh Russ for  
14 Relators.

15 MR. WIRMANI: Good morning, Judge. Andrew Wirmani on  
16 behalf of Relators.

17 MS. WENDEL: Good morning. Whitney Wendel on behalf of  
18 Relators.

19 THE COURT: All right. Good morning to you folks.  
20 Oh, I'm sorry. I forget there's a line behind you.

21 MS. SMITH: Sherry Smith for Relators.

22 MS. CLAIRMONT: Good morning, Your Honor.  
23 Joy Clairmont for Relators.

24 The Relators are here as well.

25 THE COURT: Okay. Got it. I see them. All right.

1 Thank you.

2 Good morning.

3 And for Janssen?

4 MS. BROWN: Good morning, Your Honor. Alli Brown for  
5 Janssen.

6 MR. WYATT: Good morning, Your Honor. Geoff Wyatt  
7 for Janssen.

8 MR. KLEIN: Good morning, Your Honor. Brad Klein for  
9 Janssen.

10 THE COURT: All right. Good morning to you all as  
11 well. All right. So be seated.

12 All right. Anything we need to chat about this  
13 morning? Are we still on schedule that I'm going to do some  
14 very brief preliminary instructions, and then we'll go right  
15 into opening statements and then the presentation of evidence?  
16 Or anything else we need to chat about this morning?

17 MR. MARKETOS: I don't think so, Your Honor. We  
18 exchanged openings, and we have no objection to the slides  
19 that they're using in their opening. I'll give Ms. Brown an  
20 opportunity to let me know if they have any issues.

21 And then we'll -- I think we'll solve that problem  
22 itself. Then we'll go right into openings and then call our  
23 first witness.

24 THE COURT: Call your first witness.

25 Is that your understanding as well, Ms. Brown?

1 MS. BROWN: That's right, Your Honor.

2 THE COURT: So have you reviewed their -- whatever  
3 they presented to you and there's no objection, or are you  
4 reviewing it currently this morning?

5 MS. BROWN: Currently reviewing it right now.

6 THE COURT: All right.

7 MS. BROWN: So far no objection. I'm almost done.

8 THE COURT: All right. Well, then, do you want to  
9 let my folks know if there is an issue so I can pop back out  
10 here? I'm not far away. I can kind of address it before we  
11 try to get the jurors ready by 9:30.

12 Look, I'm anticipating they're going to be on time, and  
13 if they are, I'm going to put them in the box at 9:30, and  
14 we're going to start immediately with preliminary instructions  
15 and go right into openings.

16 But if there is an issue that you all need me to  
17 resolve, then I would want to know before 9:30. So you'll let  
18 somebody know?

19 MS. BROWN: Sure.

20 THE COURT: Okay.

21 MS. BROWN: Absolutely, Your Honor, and I'm  
22 optimistic there will not be an issue.

23 THE COURT: All right.

24 What else? Is there anything else we need to discuss  
25 this morning?

1 MR. MARKETOS: Not this morning, Your Honor.

2 THE COURT: What about the stipulation? Is that  
3 still something that you're doing?

4 MR. MARKETOS: I think -- and I'll talk to Ms. Brown  
5 about it, but I think what we'll do is, since we've got  
6 opening, opening -- I think what we'll do is we'll just offer  
7 the unobjected to, you know, move --

8 THE COURT: You don't need a stip. If you move to  
9 admit Exhibit 1 through 1000 and there's no objection, I'm  
10 going to say so admitted. Every one of those exhibits is now  
11 in evidence.

12 MR. MARKETOS: That's right, and a lot of documents  
13 that each side has on its exhibit list are related to the  
14 Government, and each side a year and a half ago said hearsay,  
15 and I think we've gotten past that because they're enlarged  
16 Government documents.

17 So we'll address that with each other, and then we'll  
18 make it simple by moving and not objecting.

19 THE COURT: All right. Are there any stipulations in  
20 the case or no? Outside of the exhibits, are there any  
21 stipulations of facts or any stipulations of expected  
22 testimony? I don't remember receiving any of that.

23 MS. BROWN: No, Your Honor.

24 THE COURT: So I don't remember that being part of  
25 the case.

1 MR. MARKETOS: Not yet, Your Honor. I mean, we might  
2 at some point.

3 THE COURT: Right.

4 MR. MARKETOS: But there are none in the pretrial  
5 order, and we can -- that's probably something we can work on.

6 THE COURT: All right. Just keep me posted if that  
7 changes. For now, I don't remember receiving anything, so I'm  
8 not anticipating anything. So, obviously, that can change  
9 throughout the course of the trial.

10 All right. Well, then, anything we need to chat about  
11 before we just figure out if the jurors are going to be here  
12 on time and will be ready to go?

13 MR. MARKETOS: Not from -- not from our side,  
14 Your Honor.

15 MS. BROWN: No, Your Honor. Thank you.

16 THE COURT: All right. Well, then, folks, I  
17 appreciate you coming in early. Sometimes we're going to talk  
18 for five minutes; sometimes we're going to talk for 30. I  
19 just don't know what it's going to be each morning, but I  
20 appreciate you being here at 9:00.

21 So I'm going to put us in recess for the next  
22 25 minutes. If for some reason you need me before then, all  
23 you need to is just reach out to my chambers. I'll pop right  
24 back out and find out what's going on, and we'll talk about it  
25 before the jurors get here.

1           What about the lunch break? So yesterday I gave a long  
2 break because we were selecting the jury. Normally I don't do  
3 an hour lunch. We do a 30-minute lunch, and everybody can  
4 bring their food or go across the street or whatever you plan  
5 on doing.

6           But if that's not sufficient, I'd rather ask you now  
7 without the jury present.

8           What are your thoughts about how long you want this  
9 lunch break to be?

10           MR. MARKETOS: From my view, Your Honor, 30 to  
11 45 minutes is good if we could let you know in advance because  
12 we anticipate needing the 45 instead.

13           THE COURT: You want me to just default to 45, folks?

14           MS. BROWN: I would.

15           THE COURT: And then I don't -- because I'd rather  
16 not have to go every day and say, Today is 30 minutes,  
17 tomorrow is 45, today is this.

18           MS. BROWN: Yeah. My view, just from the jury  
19 perspective, is, you know, sometimes the elevators, it just  
20 takes a little while to get out. Like, I think, 45 minutes  
21 is the standard.

22           THE COURT: All right. I'll default to 45 for  
23 everybody, and that way we don't have to keep messing around  
24 with the time. There may be a time where I do extend it, but  
25 that's only because I may be handling another matter at around



1 12:30 or so, and I need the courtroom, and I don't know how  
2 long I'm going to be on that particular case. It will be  
3 unrelated to this case, but I'm going to need some time.

4 So if that comes up, then I'll tell the jurors and all  
5 of you, Look, today the Court has a conflict, needs a little  
6 extra time during the lunch break. Normally I won't, but  
7 there are things I will squeeze in while you guys are stepping  
8 out.

9 Just as a reminder, just so we're clear, we're only  
10 going to sit to Thursday this week because I'm not sitting  
11 Fridays. Next week we're only sitting through Wednesday.

12 So I may remind the jurors since they're now coming  
13 in -- this is now the jury. I think I'm going to give them a  
14 heads-up this morning just so they can plan ahead that they  
15 have a shorter week. Next week is a three-day trial day.

16 But other than that, I think -- I'm going to look  
17 through the calendar, and I'll keep you posted well in advance  
18 if there's another conflict. There may be one other -- Kim, I  
19 think there's a -- there's a conflict where I may have to do a  
20 half a day.

21 There's a court proceeding that I may have to -- we may  
22 have to do half a day, and I'll -- I think what I like to do  
23 is look at that date, talk to you all first to see if that  
24 makes sense or it makes sense not to sit that day, but I'll  
25 give you half my day.

1           We have a court proceeding that I think I'm obligated  
2 to attend.

3           It's May 23rd?

4           So why don't you guys -- May 23rd we have a court event  
5 that I believe I'm being asked to attend. There's nothing  
6 mandatory for me.

7           I mean, I can say no to anything I want to say no to,  
8 but I think this one -- it's strongly -- it's suggested I  
9 attend this event in this courthouse.

10           So take a look at that date. As we get closer, let me  
11 know. I'd like to do half a day and then break during the  
12 lunch for the day, but if you think that's really just, Judge,  
13 the juice isn't worth the squeeze here, we really just think  
14 we can't do much there, then I'll consider it.

15           But I would like to see if we can get some things done  
16 that morning, even if the jury gets half a day, so...

17           MS. BROWN: And, Your Honor, I'm hopeful we will be  
18 in our case by the 23rd, and we actually have a doctor who can  
19 only come the 23rd, so we would be in favor of even a half a  
20 day.

21           THE COURT: Oh, all right. So it may just work out  
22 by coincidence that particular date.

23           MS. BROWN: Yeah, that would be terrific.

24           THE COURT: All right. So let's see where we are.

25           MS. BROWN: Okay.

1 THE COURT: But that makes sense. Okay. It just  
2 happens to be on that particular day that we can maybe do that  
3 one --

4 MS. BROWN: Yeah.

5 THE COURT: -- doctor and be done?

6 MS. BROWN: That would be terrific. That would be  
7 terrific.

8 THE COURT: Well, I'll let you guys think about it  
9 and confer on your own. And like I said, I just want to give  
10 you a heads-up.

11 Kim, is there any other -- are there any other dates  
12 that hit?

13 I'm going to double-check it. I'm not going to hold  
14 you guys hostage while I check the calendar, but I'm going to  
15 double-check when I come off the bench to see if there's any  
16 other dates that I want to give you advance notice of that I  
17 might have a conflict.

18 And that way you can at least have that today for now,  
19 which are -- which are the dates that the judge may not be  
20 able to sit for a full day or at all. There might be one more  
21 in June. And I don't know how long we're going to be pressing  
22 into June, but I still want to give you that date just in  
23 case.

24 Other than that, though, I'll put you guys in recess.

25 I'm sorry, Ms. Brown, do you have something?

1 MS. BROWN: Yeah. As we were talking, I kept  
2 flipping, and, Your Honor, do you have two objections to two  
3 slides that were -- I believe they're not sourced, but I  
4 believe these are perhaps other settlements with the  
5 Government about other cases involving other products. It's  
6 highly prejudicial. The 2 billion --

7 MR. MARKETOS: You want to talk about it first?

8 MS. BROWN: Yeah, sure.

9 MR. MARKETOS: I'm sorry to interrupt.

10 THE COURT: No, no. Here's my two cents. Why don't  
11 you confer on it.

12 MS. BROWN: Sure.

13 THE COURT: But I'd like to know in advance, though,  
14 what are the two slides. One slide is you guys identifying  
15 unrelated cases where the United States has settled.

16 MR. MARKETOS: No. They're the settlements with  
17 Janssen that are already addressed in the motion in limine --

18 THE COURT: Okay. And then what's --

19 MR. MARKETOS: -- the CIAs.

20 THE COURT: And what's the other slide?

21 MR. MARKETOS: I don't know what the other --

22 MS. BROWN: So the first slide, Your Honor, has  
23 \$81 million Government allegations of off-label marketing, not  
24 this case. \$2 billion Government allegations of kickbacks,  
25 also not this case.

1           Then Serono's \$704 million settlement. Serono Labs  
2 will be excluded from all federal health care programs for at  
3 least five years.

4           THE COURT: All right. Why don't -- you guys are  
5 going to confer?

6           MR. MARKETOS: Sure.

7           MS. BROWN: Sure.

8           THE COURT: Let me know soon though whether I've got  
9 to get involved or not. So do I need to review what I did in  
10 the motion in limine? I mean, it's not like I have all those  
11 opinions before me.

12           MR. MARKETOS: I don't -- at this point, I think a  
13 conference might help.

14           THE COURT: All right.

15           MR. MARKETOS: I'm not sure if -- you've already  
16 ruled on this.

17           THE COURT: Let's do this. Yeah. If I ruled, I can  
18 tell you this, I'm not going to change my mind. So either I  
19 have to go back and see what I've said, but why don't you all  
20 confer. Let me know if there's still an issue, and then we'll  
21 go from there.

22           Other than that, can I put you guys in recess for a  
23 bit?

24           MS. BROWN: Yes, Your Honor. Thank you.

25           MR. MARKETOS: Thank you.

1 THE COURT: All right. You guys remain seated. I'll  
2 be back.

3 (A short recess occurred.)

4 THE DEPUTY COURT CLERK: Please remain seated.

5 THE COURT: All right, folks, you need to see me.

6 MR. RUSS: Yes, Your Honor. We have an objection to  
7 two slides, basically for the same reason, in Relators'  
8 opening statement. So the first --

9 THE COURT: I don't have the slides so I can't see  
10 them from here. Is somebody going to give me a copy of the  
11 slides?

12 MR. RUSS: Do you all have a second set?

13 MR. MARKETOS: Sure.

14 MR. RUSS: I can bring mine up. I don't need to look  
15 at it.

16 THE COURT: You may, thank you for asking.

17 By the way, I'm going to remind you folks, when you  
18 have witnesses in the witness stand and you want to approach a  
19 witness, if it's not something you're doing digitally from the  
20 podium, you have to ask to approach the witness.

21 It's not because of me, and it's not because of any  
22 ego. I've got Megan sitting in the well. I've got a jury  
23 sitting there in the first row. They need to know when people  
24 are walking by them.

25 So it's really just to give them some situational

1 awareness when you're going to be walking and a person's going  
2 to be there, because if you don't ask, nobody should be in  
3 that area of the well.

4 So just -- just as a reminder just since we're going to  
5 be dealing with witnesses today, make sure you ask. I'll give  
6 you permission, but that alerts the court reporter that you're  
7 coming. It alerts the jurors that you're coming and also for  
8 witnesses.

9 Maybe they're on cross-examination. It alerts them  
10 that you're coming to them. Also, after you approach the  
11 witness, bye. Go back to where you were, whether you're at  
12 counsel table or the podium. I don't want people leaning over  
13 there and questioning witnesses in close proximity. It's  
14 unnecessary. This isn't television.

15 Now, which slides am I looking at?

16 MR. KLEIN: Slides 28 and 29.

17 THE COURT: Bear with me. Let me go to 28. Okay.

18 MR. KLEIN: Your Honor, the issue is that these refer  
19 to these large dollar amounts, the allegations -- not -- not  
20 even the amounts of settlements, but the allegations on  
21 Slide 28, \$81 million in 2010 with respect to a different  
22 product; \$2.2 billion in 2013, again with respect to a  
23 different product.

24 And then on Slide 29, reference to a \$704 million  
25 settlement, not even the same company. And it's obvious what

1 the purpose of these references are, Your Honor. We just went  
2 through a whole day yesterday of talking to folks who objected  
3 or who raised concerns about pharmaceutical companies doing  
4 everything for profit, large dollar amounts.

5 That's what this is trying to evoke. It's purely  
6 prejudicial, and it should be excluded. There's no need for  
7 these numbers to be included to make the points that the  
8 Relators want to make with these slides, which is that Janssen  
9 was --

10 THE COURT: I'm sorry. I just want to make sure I  
11 understand the objection, and I'll go back. I have my  
12 opinion, too, because I know we addressed these settlements in  
13 the motions in limine, but I don't remember anything about  
14 dollar amounts.

15 Let me ask you this: Is your objection not to the  
16 reference to these settlements in 2010 but just the fact that  
17 they're writing what the settlement dollar amount is?

18 MR. KLEIN: That's what this objection is,  
19 Your Honor, correct.

20 THE COURT: Okay.

21 MR. KLEIN: To your point, if I may just close it  
22 out, the ruling did not speak to this issue. The ruling was  
23 about --

24 THE COURT: I just looked at it, so I agree with you  
25 there, that I didn't speak to it.



1           The ruling was about whether they could address these  
2 settlements at all, right?

3           MR. KLEIN: Right.

4           THE COURT: And I believe that I said it goes to  
5 intent and certain issues, and there may be a limiting  
6 instruction that you guys are supposed to meet and confer  
7 about a year ago or whatever I decided then, and I still don't  
8 have it.

9           So I don't even know if you all want to give me a  
10 limiting instruction that you're proposing, but my  
11 understanding is that it had to come under 404, but I  
12 understand the objection.

13           It's not to them addressing or raising the issue of  
14 these two settlements. It's the dollar amount they've put in  
15 there.

16           MR. KLEIN: That's correct, and especially on the  
17 first slide, Your Honor. These aren't even settlement  
18 amounts, and the settlement, of course, are not admissions of  
19 liability on any of these slides.

20           So these dollar amounts don't reflect anything other  
21 than they're really big, and they want the jury to know that.

22           THE COURT: All right. Other than that, though,  
23 you're -- there's no objection to the slides. It's the  
24 mention of the 81 million, the mention of the over \$2 billion  
25 on Slide 28.

1 And then on 29, I guess it's the mention of the  
2 704 million?

3 MR. KLEIN: Correct.

4 THE COURT: Let me hear -- well, let me hear from  
5 Relators' counsel because I got -- I got it. Let me hear from  
6 Relators' counsel.

7 MR. MARKETOS: Thank you, Your Honor.

8 So the purpose of these slides, and you're going to  
9 hear it in the opening, is to address exactly the heart of  
10 what was addressed in the motion in limine ruling. The  
11 problem is --

12 THE COURT: I didn't address -- I didn't say anything  
13 about dollar amounts.

14 MR. MARKETOS: No, I understand.

15 THE COURT: So let's just get to the heart of the  
16 issue. Why should I allow you to put in these dollar amounts?

17 MR. MARKETOS: Because they're arguing and will  
18 continue to argue that this is not material to the Government,  
19 and they have continued to argue that -- look at page 25 of  
20 their trial brief, 27 of their trial brief.

21 They are continuing to argue that this is not a  
22 material type of conduct to the Government. And these are  
23 their documents, their own documents warning them internally,  
24 including the second one -- warning their own people  
25 internally, Here's what the Government --

1 THE COURT: Again, what does that have to do with the  
2 81 million, the 2 million, \$200,000 and the 740 million  
3 reference?

4 I understand what you're saying. And by the way, that,  
5 I did address in the motion in limine.

6 MR. MARKETOS: Right, because --

7 THE COURT: And I said -- I actually ruled in your  
8 favor.

9 MR. MARKETOS: Right.

10 THE COURT: Obviously, there could be a limiting  
11 instruction there --

12 MR. MARKETOS: Right.

13 THE COURT: -- because you can't show propensity.  
14 You can't say because they did it here, they did it now.

15 MR. MARKETOS: Correct.

16 THE COURT: And so I presume that, when this comes  
17 out, there will be some proposal by the parties, and you're  
18 required to meet and confer on that instruction, which I still  
19 haven't received, but focus me here.

20 I will tell you right now that you're not convincing me  
21 why Janssen is wrong about why these dollar amounts should be  
22 off these slides.

23 I'm not saying you can't reference these slides. In  
24 fact, there's no objection to that. If they did, I would  
25 overrule it.

1 MR. MARKETOS: Sure.

2 THE COURT: But why do you get these dollar amounts  
3 in here?

4 MR. MARKETOS: The answer to that is because it goes  
5 to the severity of the conduct. What they're arguing about is  
6 materiality. The amount --

7 THE COURT: I'm not going to let you -- look, if you  
8 want to address the severity of the conduct, I'm not going to  
9 allow you to demonstrate that in front of this jury by what  
10 some unrelated jury did in a different case under different  
11 facts with different folks. I mean --

12 MR. MARKETOS: Oh, I understand that, Your Honor.  
13 Let me be clear what these are. This is the -- this is their  
14 corporate integrity agreement. It's theirs. It's Janssen and  
15 Johnson & Johnson's for the same conduct entering into with  
16 the Government.

17 These are the CIAs that Your Honor admitted into  
18 evidence on the motion in limine. It's not pulling some  
19 random case out of left field. These are the corporate  
20 integrity agreements.

21 THE COURT: But where did I -- where did I say in the  
22 motion in limine that these dollar amounts were going to be  
23 admissible?

24 MR. MARKETOS: Well, when you said that --

25 THE COURT: No, I mean, show me, though. I just want

1 to see it.

2 MR. MARKETOS: It's the settlements. So we thought,  
3 Oh, okay, it's the settlements. We briefed it. We addressed  
4 it, and the settlements are -- can be addressed with a  
5 limiting instruction.

6 And then they're saying, Okay, but this part of the  
7 settlement can't come in. When we said we can address the  
8 settlements and address it with a limiting instruction, it  
9 matters, and they're continuing to argue materiality.

10 So -- and for, you know, 404(b), so this is the  
11 settlement that is addressing the heart of your ruling.  
12 They're saying, Well, yes -- the settlement, yes, but not the  
13 amount of the settlement.

14 Does that make sense, Your Honor? I hope -- and if the  
15 answer is, Let's leave it alone, out of opening for now so you  
16 can hear how the evidence comes in and see what we're talking  
17 about, then that's fine. They'll keep it out of opening.

18 But we're not going to let them tell the jurors that  
19 this is an AIDS drug, which you'll hear in their opening.

20 It's an AIDS drug. The Government wanted it out there  
21 on the market. This is not the type of conduct that the  
22 Government is concerned about when they're telling themselves  
23 internally and they're entering into agreements for this type  
24 of misconduct to the tune of 81 million and 2.2 billion and  
25 704 million.

1 THE COURT: All right. Then here's what you've  
2 convinced me to do is just kick this can down the road.  
3 You're going to pull it from the opening slides, but I'm going  
4 to reserve on my decision as to whether it's admissible at the  
5 appropriate time because, what you're telling me, and I'm  
6 hearing you as well, is that, Look, as this flushes out in the  
7 trial, you're going to see why this should be allowed in.

8 That's what you're telling me. Now, nothing has  
9 happened in this trial yet, so it's a little difficult for me  
10 to shake my crystal ball to see how that's going to play out.

11 MR. MARKETOS: Right.

12 THE COURT: So if you're telling me that the Relators  
13 will pull out these numbers out of these slides where I at  
14 least sustain the objection for now, but I reserve on the  
15 ultimate decision, Counsel, for both sides.

16 So don't say I ruled in the beginning of this trial  
17 that this was not coming in. I want to be very clear in my  
18 language. I haven't ruled on this issue.

19 All I've ruled on, and it sounds like it's with the  
20 consent of Relators, that for now this issue will be pulled  
21 out of these slides. You'll do your opening statements at the  
22 appropriate time.

23 I presume we're going to have to revisit this issue --

24 MR. MARKETOS: Yes, Your Honor.

25 THE COURT: -- unless there's some agreement by the

1 parties. Agreed?

2 MR. MARKETOS: Yes, Your Honor.

3 THE COURT: All right. So that's resolved for now.

4 MR. KLEIN: And we, obviously, disagree with  
5 everything that was just said, but we'll reserve until the  
6 issue is ripe.

7 THE COURT: I figured as much. I figured as much.  
8 So no, no. I got it.

9 So we will -- let's just table this issue for now  
10 because your objection is sustained with respect to the slides  
11 with the opening. But, again, I haven't ultimately decided  
12 the issue, and I'm going to wait and see how this fleshes out.

13 What else? Anything else I need to resolve before I  
14 see if the jurors are ready?

15 MR. MARKETOS: I think that's it, Your Honor.

16 THE COURT: All right. But let me ask you this. Do  
17 you need a few minutes to make whatever corrections you're  
18 going to make to these slides? Because now that --

19 MR. MARKETOS: Yeah. Well, yes. But if it's okay,  
20 we're not going to reprint them all.

21 THE COURT: Well, I'm just saying, I presume you're  
22 going to publish these slides electronically for the jury.

23 MR. MARKETOS: Yeah. We're going to take out the  
24 numbers --

25 THE COURT: And the rest can remain.

1 MR. MARKETOS: In Slide 28 and the number in Slide  
2 29.

3 THE COURT: Slide 29. All right.

4 MR. MARKETOS: For now.

5 THE COURT: For now. Anything additional from  
6 Relators at this time?

7 MR. MARKETOS: No, Your Honor. Thank you.

8 THE COURT: Janssen?

9 MR. KLEIN: No, Your Honor.

10 THE COURT: All right. Kim, should we see if -- do  
11 we have all ten?

12 THE DEPUTY COURT CLERK: I know we have nine.

13 THE COURT: Do you want to just wait and see and let  
14 me know?

15 All right, folks. You can be seated. Let's wait and  
16 see if we have these folks.

17 MS. BROWN: And, Your Honor, is it the Court's  
18 intention to break in between both openings, or will we just  
19 go through the morning?

20 THE COURT: Why don't we see. I don't mind giving a  
21 ten-minute break between it. Let you guys reboot --

22 MS. BROWN: That would be great.

23 THE COURT: -- and the jurors can stretch, because I  
24 think they're about an hour each, right?

25 MS. BROWN: Exactly.



1 THE COURT: So why don't we try to do preliminary  
2 instructions, Relators' opening, break, and then you all go.

3 MS. BROWN: Thank you, Your Honor.

4 THE COURT: Any objection to that on the Relators'  
5 side?

6 MR. MARKETOS: I didn't hear it, Your Honor, so no  
7 objection.

8 THE COURT: That's all right. I'm just trying to  
9 plan a morning break.

10 What I think I'll do is I'll bang through the  
11 preliminary instructions. You guys will open. Then I'll give  
12 everyone a ten-minute break, and then we'll do the openings  
13 for the defense.

14 And then I don't know where we'll be after that. Let's  
15 just see how that plays out. But if we can get a little bit  
16 of witness testimony started, why not?

17 What time are we breaking for lunch? Is it -- what  
18 time is my call?

19 THE DEPUTY COURT CLERK: 12:30.

20 THE COURT: I need to -- I have a hard break at  
21 12:30. I have a call on an unrelated case that I have to take  
22 at that time. So just plan that we'll likely try to break  
23 around 12:30. And whoever has the witness on the stand at  
24 that time, if there's a good place to break, even if it's  
25 slightly before 12:30, just let me know if you think that, you

1 know, you're about to switch to a new topic or something like  
2 that, so I'm not trying to interrupt the flow of either of you  
3 guys.

4 But I do need to have a break at 12:30.

5 MR. MARKETOS: Thank you.

6 THE COURT: All right. It sounds like we're waiting  
7 for one juror.

8 Will you know as soon as they --

9 THE DEPUTY COURT CLERK: Yes. Let me just...

10 (Recess.)

11 THE DEPUTY COURT CLERK: All rise.

12 (The jury enters the courtroom at 9:42 a.m.)

13 THE COURT: Folks, you may be seated.

14 Folks, you're going to shift over one. All right, good  
15 to go.

16 Members of the jury, welcome back. Good morning.

17 Appreciate you guys -- folks trying to get here on time.

18 Continue to do so. We will maintain to try to be ready every  
19 morning by 9:30. If you guys are here, I'll put you in the  
20 box, and we'll start.

21 Just a few things I want to note.

22 First what we're going to be doing today. I mentioned  
23 very late yesterday we were going give -- I was going to give  
24 you some preliminary instructions. There's about 12  
25 instructions that I'm going to give you. These are

1 preliminary instructions at the outset of the case.

2 I don't allow note-taking, but don't worry about that.

3 You don't have to memorize everything I'm going to tell you.

4 At the end of the trial, I promise you, you'll have these

5 instructions plus many more. And you won't have to memorize

6 them either because in deliberations, I always allow a few

7 written copies of these instructions to go back with the table

8 of contents so that if you're trying to remember, Remember the

9 judge instructed us on this or this or the lawyers directed

10 you to a particular instruction, you'll have some copies of

11 those in writing.

12 So for now, all I'm asking you is to pay attention to

13 these preliminary instructions that I give you. Don't stress

14 about memorizing every word that I have to say because I

15 promise you, they will be repeated, and you'll get them in

16 writing later in the trial.

17 After I give you those preliminary instructions, we're

18 going to go into opening statements. You'll first hear

19 opening statements from the Relators. Probably look to take

20 the ten-minute break after that because the openings are about

21 an hour each, and then you'll hear from the defense opening,

22 and then we'll see where we are with witness testimony or --

23 around lunchtime.

24 I'm going to do a hard break at least by 12:30 because

25 I have another matter I have to address at that time, but

1 we'll see where we stop.

2           The lunch break will be 45 minutes moving forward. So  
3 it's not going to be an hour every day, but I also want to  
4 give you a little more than 30 minutes because I don't know if  
5 you're bringing lunch or if you're going across the street or  
6 what you plan to do.

7           So that's where we are today.

8           One other issue I just want to give you a heads-up just  
9 for advance notice for next week. So we're sitting Monday  
10 through Thursday every week unless there's a conflict with the  
11 Court. Next week, I have a conflict. So we're only sitting  
12 Monday, Tuesday and Wednesday. So I wanted to tell you that  
13 now so that you can plan ahead that you will not be here  
14 Thursday and Friday of next week. After that, we're back to  
15 Monday through Thursday.

16           If there are any other issues or conflicts that come up  
17 during the trial -- and there could be another one where we're  
18 only sitting for half a day -- I'm going to give you notice  
19 well in advance. That way you're able to make some plans and  
20 say, all right. I have my life back on Thursday of next week.  
21 Or two weeks from now, I've got only a half day that I'm  
22 required to be in court.

23           So I'm going to do my best to give you that courtesy,  
24 and I just ask you to be patient, that we are going to move  
25 Monday through Thursday as much as we can, but there are going

1 to be days where -- you know, five, five and a half weeks is a  
2 long time for even the Court to be able to commit to every  
3 single day because there's so many other cases that we have to  
4 address.

5 So just ask you to be patient there.

6 So with that, let me go through those preliminary  
7 instructions. We'll get moving with the opening statements,  
8 and we'll go from there.

9 All right. Introduction; Role of the Jury.

10 Now that you have been sworn, I have the following  
11 preliminary instructions for your guidance as jurors in this  
12 case.

13 You will hear the evidence, decide what the facts are,  
14 and then apply those facts to the law that I will give to you.

15 You and only you will be the judges of the facts. You  
16 will have to decide what happened. I play no part in judging  
17 the facts. You should not take anything I may say or do  
18 during the trial as indicating what I think of the evidence or  
19 what your verdict should be. My role is to be the judge of  
20 the law. I make whatever legal decisions have to be made  
21 during the course of the trial, and I will explain to you the  
22 legal principles that must guide you in your decisions. You  
23 must follow that law whether you agree with it or not.

24 Description of the Case; Summary of Applicable Law.

25 In this case, Relators claim that Defendant violated

1 federal and state False Claims Acts and the Defendant engaged  
2 in off-label marketing and kickback schemes relating to two  
3 HIV medicines, Prezista and Intelence; Defendant denies those  
4 claims. I will give you detailed instructions on the law at  
5 the end of the case, and those instructions will control your  
6 deliberations and decision.

7 But in order to help you follow the evidence, I will  
8 now give you a brief summary of the elements that Relators  
9 must prove to make their case.

10 The elements for a violation of the Anti-Kickback  
11 Statute, which Relators must prove by a preponderance of the  
12 evidence, are:

13 First, Janssen offered or paid any remuneration,  
14 including any kickback or bribe, directly or indirectly,  
15 openly or secretly, in cash or in kind;

16 Second, that one purpose of the remuneration offered or  
17 paid was to induce or reward prescriptions of Prezista or  
18 Intelence;

19 Third, that the claims for payment for those  
20 prescriptions were submitted to a Government health care  
21 program, and that there was some recorded evidence of a link  
22 between the alleged inducement and the claims submitted for  
23 reimbursement; and,

24 Fourth, that Janssen acted knowingly and willfully.

25 The elements for a violation of the False Claims Act,

1 which Relators must prove by a preponderance of the evidence,  
2 are:

3 First, that the claims submitted or caused to be  
4 submitted by Janssen were false;

5 Second, that Janssen caused the claims to be submitted  
6 to the federal Government;

7 Third, that Janssen acted knowingly; and,

8 Fourth, that Janssen's alleged Anti-Kickback Statute or  
9 off-label marketing violations were material to the  
10 Government's payment decision.

11 In addition to the federal False Claims Act, Relators  
12 also assert claims on behalf of the States of New Jersey,  
13 California, Colorado, Connecticut, Delaware, Florida, Georgia,  
14 Hawaii, Illinois, Indiana, Iowa, Louisiana, Massachusetts,  
15 Michigan, Minnesota, Montana, Nevada, New Mexico, New York,  
16 North Carolina, Oklahoma, Rhode Island, Tennessee, Texas,  
17 Virginia, Washington, and the District of Columbia under their  
18 versions of the False Claims Act. These State False Claims  
19 Acts allow Relators like Ms. Penelow and Ms. Brancaccio to  
20 bring a lawsuit on behalf of a state Government.

21 If you find that Janssen violated the False Claims Act  
22 or its State analogues, then you must assess damages. I will  
23 provide you with additional instructions regarding damages at  
24 the end of the trial.

25 If you find that Janssen violated the False Claims Act,

1 then you must also identify the number of false or fraudulent  
2 claims that were submitted to the United States, the States,  
3 and the District of Columbia. Again, I'll provide you with  
4 additional instructions on this point at the end of the trial.

5 Conduct of the Jury.

6 Now, a few words about your conduct as jurors.

7 First, I instruct you that during the trial and until  
8 you have heard all of the evidence and retire to the jury room  
9 to deliberate, you are not to discuss the case with anyone,  
10 not even among yourselves.

11 By the way, just to be clear, when you are dismissed  
12 every day or during breaks back to the deliberations room,  
13 that is not deliberations. You are not into deliberations  
14 until I tell you that you're in deliberations, and that's at  
15 the conclusion of the trial. So I want to make sure you  
16 understand that. Being in the deliberation room doesn't put  
17 you in that process. That's just the room we give you all to  
18 hang out during the trial. Okay? Just be clear about that.

19 Now, if anyone should try to talk to you about the  
20 case, including a fellow juror, bring it to my attention  
21 promptly. There are good reasons for this ban on discussions,  
22 the most important being the need for you to keep an open mind  
23 throughout the presentation of evidence. I know that many of  
24 you use cell phones, smart phones, like iPhones -- it says  
25 here Blackberries, but I think nobody has a Blackberry, right?



1 I mean, this is a little outdated.

2 But a lot of you have smart phones, like iPhones, and  
3 other portable electronic devices; laptops, notebooks, and  
4 other computers, both portable and fixed; and other tools of  
5 technology, to access the internet and to communicate with  
6 others. You also must not talk to anyone about this case or  
7 use these tools to communicate electronically with anyone  
8 about the case. And this includes your family and your  
9 friends. You may not communicate orally with anyone about the  
10 case on your cell phone, smart phone, or portable or fixed  
11 computer or device of any kind; or use these devices to  
12 communicate electronically by messages or postings of any  
13 kind, including email, instant messages, text messages, texts  
14 or instant messaging services such as Twitter or X or through  
15 any blog, website, internet chatroom or by way of any other  
16 social networking websites or services such as Facebook or  
17 LinkedIn or YouTube.

18 Now, if any lawyer, party, or witness does not speak to  
19 you when you pass in the hall or ride the elevator or you see  
20 them in the lobby or the like, remember it is because they are  
21 not supposed to talk or visit with you either.

22 All right? They're not being rude. They're required  
23 not to communicate with you during this trial unless they're  
24 in the well and in the courtroom and speaking to you in a jury  
25 speech.

1           Second, do not read or listen to anything related to  
2 this case that is not admitted into evidence. By that I mean,  
3 if there's a newspaper article or radio or television report  
4 relating to this case, do not read the article or watch or  
5 listen to the report. In addition, do not try to do any  
6 independent research or investigation on your own on matters  
7 relating to the case or this type of case. Do not do any  
8 research on the internet, for example. You are to decide the  
9 case upon the evidence presented at trial. In other words,  
10 you should not consult dictionaries or reference material,  
11 search the internet, websites, blog or use any other  
12 electronic tools to obtain information about this case or to  
13 help you decide the case. Please do not try to find out  
14 information from any source outside the confines of this  
15 courtroom.

16           Again, do not reach any conclusion on the claims or  
17 defenses until all the evidence is in. Keep an open mind  
18 until you start your deliberations at the end of the case.

19           Bench Conferences.

20           During trial, it may be necessary for me to talk with  
21 the lawyers out of your hearing by having a bench conference  
22 or a sidebar.

23           In fact, you probably saw numerous sidebars yesterday  
24 during the jury selection process. Let me just tell you, I  
25 promise that's the most you're ever going to see. Right? In

1 the jury selection process, I intentionally do a lot of those  
2 sidebars to protect confidential information of prospective  
3 jurors so that they're not talking about significant issues in  
4 their personal lives in front of a room of a hundred people.  
5 So that's the reason for it.

6 But during the trial, there are also times where there  
7 may be issues that I have to talk with the lawyers outside of  
8 your earshot. If that happens, all I'm going to ask you to do  
9 is please be patient, although it will be significantly less  
10 than what you saw yesterday.

11 I also want to be clear: We're not trying to keep  
12 important information from you. These conferences are  
13 necessary for me to fulfill my responsibility, which is to be  
14 sure that evidence is presented to you correctly under the  
15 law.

16 We will, of course, do what we can to keep the number  
17 and length of these conferences to a minimum.

18 I may not always grant an attorney's request for a  
19 conference or a sidebar. Do not consider my granting or  
20 denying a request for a conference or sidebar as any  
21 indication of my opinion of the case or what your verdict  
22 should be.

23 Evidence.

24 The evidence from which you are to find the facts  
25 consists of the following:

- 1           1. The testimony of the witnesses.
- 2           2. Documents and other things received as exhibits;
- 3 and,
- 4           3. Any facts that are stipulated -- that is, formally
- 5 agreed to by the parties.

6           The following things are not evidence:

- 7           1. Statements, arguments, and questions of the lawyers
- 8 for the parties in this case;
- 9           2. Objections by the lawyers;
- 10          3. Any testimony that I tell you to disregard; and,
- 11          4. Anything you may see or hear about this case
- 12 outside of the courtroom.

13           You must make your decision based only on the evidence  
14 that you see and hear in court. Do not let rumors,  
15 suspicions, or anything else that you may see or hear outside  
16 of court influence your decision in any way.

17           You should use your common sense in weighing the  
18 evidence. Consider it in light of your everyday experience  
19 with people and events, and give it whatever weight you  
20 believe it deserves. If your experience tells you that  
21 certain evidence reasonably leads to a conclusion, you are  
22 free to reach that conclusion.

23           There are rules that control what can be received into  
24 evidence. When a lawyer asks a question or offers an exhibit  
25 into evidence and a lawyer on the other side thinks that it is

1 not permitted by the rules of evidence, that lawyer may  
2 object. This simply means that the lawyer is requesting that  
3 I make a decision on a particular rule of evidence. You  
4 should not be influenced by the fact that an objection is  
5 made. Objections to questions are not evidence. Lawyers have  
6 an obligation to their clients to make objections when they  
7 believe that evidence being offered is improper under the  
8 rules of evidence. You should not be influenced by the  
9 objection or by the Court's ruling on it. If the objection is  
10 sustained, ignore the question. If it is overruled, treat the  
11 answer like any other. If you are instructed that some item  
12 of evidence is received for a limited purpose only, then you  
13 must follow that instruction.

14 Also, certain testimony or other evidence may be  
15 ordered struck from the record, and you will be directed to  
16 disregard that evidence. Do not consider any testimony or  
17 other evidence that gets struck or excluded. Do not speculate  
18 about what a witness might have said or what an exhibit might  
19 have shown.

20 Direct and Circumstantial Evidence.

21 There are two types of evidence that you may use in  
22 reaching your verdict. One type of evidence is called "direct  
23 evidence." An example of "direct evidence" is when a witness  
24 testifies about something that the witness knows through his  
25 or her own senses -- something the witness has seen, felt,

1 touched, or heard or did. If a witness testified that he saw  
2 it raining outside and you believed him, that would be direct  
3 evidence that it was raining. Another form of direct evidence  
4 is an exhibit where the fact to be proved is its existence or  
5 current condition.

6 The other type of evidence is circumstantial evidence.  
7 "Circumstantial evidence" is proof of one or more facts from  
8 which you could find another fact. So if someone walked into  
9 the courtroom wearing a raincoat covered with drops of water  
10 and carrying a wet umbrella, that would be circumstantial  
11 evidence from which you could conclude that it was raining.

12 And also presume my blinds are closed, right, because  
13 you probably could see it.

14 But presume if this room is shut down, if somebody  
15 comes in like that, that's circumstantial evidence that it is  
16 raining.

17 Now, you should consider both kinds of evidence that  
18 are presented to you. The law makes no distinction in the  
19 weight to be given to either direct or circumstantial  
20 evidence. You are to decide how much weight to give any  
21 evidence.

22 Credibility of Witnesses.

23 In deciding what the facts are, you may have to decide  
24 what testimony you believe and what testimony you do not  
25 believe. You are the sole judges of the credibility of the

1 witnesses. "Credibility" means whether a witness is worthy of  
2 belief. You may believe everything a witness says or only  
3 part of it or none of it. In deciding what to believe, you  
4 may consider a number of factors, including the following:

5 (1) the opportunity and ability of the witness to see  
6 or hear or know the things the witness testifies to;

7 (2) the quality of the witness's understanding and  
8 memory;

9 (3) the witness's manner while testifying;

10 (4) whether the witness has an interest in the outcome  
11 of the case or any motive, bias, or prejudice;

12 (5) whether the witness is contradicted by anything the  
13 witness said or wrote before trial or by other evidence;

14 (6) how reasonable the witness's testimony is when  
15 considered in the light of other evidence that you believe;  
16 and,

17 (7) any other factors that bear on believability.

18 Now, the weight of the evidence to prove a fact does  
19 not necessarily depend on the number of witnesses who  
20 testified. What is more important is how believable the  
21 witnesses were and how much weight you think their testimony  
22 deserves.

23 Jury Questions for Witnesses.

24 Only the lawyers and I are allowed to ask questions of  
25 the witnesses. You are not permitted to ask questions of the

1 witnesses. If, however, you are unable to hear a witness or a  
2 lawyer, please raise your hand, and I'll correct that  
3 situation.

4           There may be times where a witness doesn't have the  
5 microphone near their mouth, they don't project -- I should be  
6 using a microphone, but everyone says I'm loud enough. So you  
7 can hear me, folks, right? So if you can't hear the witness,  
8 the microphone is away, they have a lower way of speaking,  
9 raise your hand.

10           Counsel, folks, also let me know, because, for the  
11 lawyers, it's important they hear the witnesses as well. So  
12 just alert me if you can't hear. I can make an adjustment, or  
13 if you have a witness in the witness box, you can always alert  
14 them to, you know, Sir, ma'am, why don't you put the  
15 microphone a little bit closer, we can hear you better. And  
16 I'll also instruct them to do that if for some reason you  
17 can't hear.

18           Note-Taking By Jurors.

19           And I referenced this very, very briefly when I was  
20 talking about these instructions and how you get them later in  
21 the trial.

22           But as you see, we have a court reporter here who will  
23 be transcribing the testimony during the course of the trial.  
24 But you should not assume that the transcripts will be  
25 available for your review during your deliberations. You must



1 pay close attention to the testimony as it is given.

2           You may not take notes during the course of the trial.  
3 There are several reasons for this. It is difficult to take  
4 notes, and at the same time, pay attention to what a witness  
5 is saying and the witness's manner while testifying. One of  
6 the reasons for having a number of persons on the jury is to  
7 gain the advantage of your individual and collective memories  
8 so that you can then deliberate together at the end of the  
9 trial and reach agreement on the facts. While some of you  
10 might feel comfortable taking notes, other members of the jury  
11 may not feel as comfortable and may not wish to do so. Notes  
12 might be given too much weight over memories, especially the  
13 memories of those who do not take notes. And so for those  
14 reasons, I ask that you not take notes during this trial.

15           Preponderance of the Evidence.

16           This is a civil case. Relators are the parties that  
17 brought this lawsuit. Defendant is the party against which  
18 the lawsuit was filed. Relators have the burden of proving  
19 their case by what is called the preponderance of the  
20 evidence. That means Relators have to prove to you, in light  
21 of all the evidence, that what they claim is more likely so  
22 than not so. To say it differently: If you were to put the  
23 evidence favorable to Relators and the evidence favorable to  
24 Defendant on opposite sides of the scale, Relators would have  
25 to make the scales tip somewhat on their side. If Relators

1 fail to meet this burden, the verdict must be for the  
2 defendant. If you find after considering all the evidence  
3 that a claim or fact is more likely so than not so, then the  
4 claim or fact has been proved by a preponderance of the  
5 evidence.

6 In determining whether any fact has been proved by a  
7 preponderance of the evidence in the case, you may, unless  
8 otherwise instructed, consider the testimony of all witnesses,  
9 regardless of who may have called them, and all exhibits  
10 received in evidence, regardless of who may have produced  
11 them.

12 You may have heard of the term "proof beyond a  
13 reasonable doubt." That is a stricter standard of proof, and  
14 it applies only to criminal cases. It does not apply in civil  
15 cases such as this. So you should put that higher standard  
16 out of your mind.

17 Description of Trial Proceedings.

18 The trial will proceed in the following manner:

19 First, attorneys for Relators will make an opening  
20 statement to you. Next, attorneys for Defendant will make an  
21 opening statement. What is said in the opening statements is  
22 not evidence but is simply an outline to help you understand  
23 what each party expects the evidence to show. A party is not  
24 required to make an opening statement.

25 After the attorneys have made their opening statements,

1 then each party is given an opportunity to present its  
2 evidence.

3 Relators go first because Relators have the burden of  
4 proof. Relators will present witnesses, and counsel for  
5 Defendant may cross-examine, and Relators may also present  
6 evidence. Following Relators' case, Defendant may present  
7 evidence. Counsel for Relators may cross-examine those  
8 witnesses for the defense. After the parties' main case is  
9 presented, they may be permitted to present what is called  
10 rebuttal evidence.

11 Now, after all the evidence has been presented, I will  
12 instruct you on the law, and then the attorneys will present  
13 to you closing arguments to summarize and interpret the  
14 evidence in a way that is helpful to their client's positions.  
15 As with opening statements, closing arguments are not  
16 evidence. After that, you will retire to the jury room to  
17 deliberate on your verdict in this case.

18 Just one note that's not in this kind of formulated  
19 instruction here. The final instructions that I'm going to  
20 give you in detail, first orally and then you'll have in  
21 writing, I give those before the closing statements. There  
22 could be two different practices. There's no right or wrong.  
23 But I believe it's better for you all to have the closing  
24 statements at the end and then you begin your deliberations so  
25 that those arguments are fresh in your mind.

1 I also -- because I give you the instructions orally  
2 and in writing, I'm not worried about you memorizing every one  
3 of those detailed instructions.

4 So prior to those closing arguments, I will deliver to  
5 you the final instructions, which are much lengthier than what  
6 I just finished here, and then we'll do the closing arguments  
7 so they're a little bit more fresh in your minds when you  
8 begin to deliberate.

9 So those are my preliminary instructions. I appreciate  
10 your patience and also I appreciated your attention while I  
11 was giving them. And again, just be mindful that I will  
12 repeat these later.

13 With that, folks, are we ready to begin closing  
14 arguments on the Relators' side?

15 MR. MARKETOS: Opening, Your Honor? Yes.

16 THE COURT: I'm sorry. Opening. Yeah, opening  
17 statements.

18 MR. MARKETOS: Yes, Your Honor. We're ready.

19 THE COURT: Yeah, the trial is done, folks. We're  
20 going to head home.

21 So at this point, I'm going to -- why don't you  
22 proceed. We'll begin with statements from the Relators, and  
23 then I'm going to take a break, and then we'll hear from the  
24 defense.

25 MR. WIRMANI: Good morning, ladies and gentlemen.

1 May it please the counsel, ladies and gentlemen of the jury.

2 Ladies and gentlemen of the jury, this case is about  
3 the greed and the calculated deception of one of the largest,  
4 most powerful pharmaceutical companies in the world. It is  
5 about a company that put profits above everything else: Above  
6 the taxpayers, above patients, above its own employees, and  
7 certainly above compliance with the law.

8 You will learn that between 2006 and 2014 the  
9 defendant, Janssen, engaged in a campaign of illegal influence  
10 to get doctors to prescribe two of its drugs. It did this in  
11 two related ways.

12 First, it paid doctors millions and millions of dollars  
13 in kickbacks.

14 Second, it marked its drugs for uses that the Food and  
15 Drug Administration, the FDA -- this is the Government agency  
16 that is responsible for patient safety -- had not determined  
17 to be safe and effective.

18 You will learn that doctors were paid over \$17 million  
19 during this scheme. Some of the top prescribing doctors  
20 individually made hundreds of thousands of dollars with  
21 payments from Janssen.

22 Doctors were treated to five-star resorts, the best,  
23 most exclusive restaurants in town. They were wined and  
24 dined, free steak dinners, alcohol, top-shelf liquor, all with  
25 the goal of influencing their prescribing, getting them to

1 prescribe Janssen's drugs.

2 Janssen used that access. It used that access to  
3 further promote its drugs for unapproved uses, uses that the  
4 FDA had not determined to be safe and effective.

5 In total, Janssen made over \$8 billion selling these  
6 two drugs. Hundreds of millions of that flowed from the  
7 unlawful scheme that we're talking about in this case. It  
8 came at the expense of taxpayers, the United States, various  
9 states, including the state of New Jersey.

10 This case was brought to recover that money, right,  
11 that taxpayer money for the Government, to make Janssen pay  
12 back what they unlawfully obtained or retained from the  
13 Government.

14 And at the end of this trial, folks, we're going to  
15 come back up here, and we are going to ask you to do that. We  
16 are going to ask you to make Janssen repay what they  
17 unlawfully took from the Government.

18 Folks, my name is Andrew Wirmani. Along with my  
19 colleagues, who you met yesterday, we represent Christine  
20 Brancaccio and Jessica Penelow.

21 Ms. Brancaccio, Ms. Penelow, they are bringing these  
22 claims on behalf of the United States and various states.  
23 They're what the law calls whistleblowers. They are Relators.  
24 The judge referred to them earlier.

25 These are former Janssen employees, individuals that

1 worked at the company for a number of years, who have  
2 firsthand knowledge. They witnessed Janssen misconduct  
3 firsthand, and they made the brave decision to come forward  
4 and expose that conduct.

5 Folks, and they did that almost 12 years ago. They  
6 have been fighting this battle for over a decade.

7 And you will hear -- you will hear from Ms. Brancaccio.  
8 You will hear from Ms. Penelow from that witness stand, but,  
9 folks, it's not just them.

10 You're going to hear from numerous Janssen insiders,  
11 right, folks from the tops of the company down to ground-level  
12 salespeople. Each of those individuals is going to come into  
13 this court. They're going to take an oath, and each of them  
14 is going to tell you the same thing.

15 The defendant consistently put sales, profits, making  
16 as much money as possible over compliance with the law by  
17 paying doctors kickbacks and by marketing their drugs for  
18 unapproved uses.

19 Folks, and we know that because their lawyers did not  
20 just take their allegations at their word, right? When these  
21 allegations were brought, lawyers went out, they investigated,  
22 they talked to other Janssen employees.

23 They obtained sworn declarations under oath, and those  
24 individuals are now going to come in this courtroom, and they  
25 are going to testify on behalf of Relators, and you will hear

1 from them.

2 Now, folks, the Government -- the Government can't  
3 always see what is going on inside of powerful companies like  
4 Janssen, right?

5 So to encourage whistleblowers to come forward, the law  
6 says that they're entitled. They are eligible for a portion  
7 of whatever they recover for the governments.

8 Now, you will learn, you know, that there is a cap on  
9 what they can recover, and ultimately, all of this is up to  
10 the discretion of the Government, folks.

11 At the end of the day, these are the Government's  
12 claims that are being prosecuted. So the Government will  
13 receive the vast majority of any recovery. The law says that  
14 Ms. Penelow and Ms. Brancaccio, that they stand in the shoes  
15 of the Government for purposes of this case.

16 I want to use my time to talk to you guys about three  
17 things. First, I want to give you just a high-level overview  
18 of some of the health care rules and the landscape at issue in  
19 this case. That's going to help you understand, put Janssen's  
20 scheme in context.

21 Second, I want to walk you through Janssen's scheme  
22 step-by-step. We're going to talk about these insider  
23 witnesses that you're going to hear from. We'll talk about  
24 some of the expert testimony you're going to hear, some of the  
25 documents that you're going to see that are going to



1 corroborate what these witnesses are saying.

2 And, finally, I want to talk to you just about a few  
3 key issues in this case.

4 So let's start with the health care industry. All  
5 right. I mentioned kickbacks earlier, right, money for  
6 influence. I think when most of us hear those types of terms,  
7 right, what's the picture that comes to mind?

8 I think most of us think of something like, you know, a  
9 mobster giving a politician a bag of cash in a dark alleyway,  
10 right? That's what we see on TV, but in the real world, these  
11 things are far more subtle.

12 They're disguised. They're concealed. They're hidden.  
13 And what you will learn is that the health care industry is a  
14 heavily, heavily regulated industry. Some of you know that  
15 because you're in health care. Things that you can do in  
16 other industries that are perfectly acceptable, those things  
17 are highly illegal in the health care context.

18 And what the judge is going to instruct you in this  
19 case ultimately is that it is illegal. It is unlawful to give  
20 a doctor anything of value, right, anything of value. That's  
21 money. It's an opportunity. It's a job. It's one purpose of  
22 that thing, not the sole purpose. It's not the primary  
23 purpose.

24 The one purpose of that thing is to influence that  
25 doctor with respect to patients that have federal insurance,

1 and you will learn that, folks, those are serious rules. They  
2 have serious consequences. In fact, in some contexts they can  
3 have criminal consequences.

4 In this case, the kickbacks took the form of speaker  
5 fees, right, speaker fees that were given to these doctors to  
6 influence their prescribing, to get them to prescribe  
7 Janssen's drugs.

8 And, folks, one thing to note: Notice how I said what  
9 the judge will instruct you. That's because it's not my job  
10 to tell you what the law is. Only the judge can do that, and  
11 Janssen, they should not be telling you what the law is  
12 either.

13 The judge will come back at the end of this case, he  
14 will instruct you on what the law is. Our job and your job is  
15 to determine what the facts of this case are together.

16 The second thing you guys need to know about the health  
17 care industry is that it is regulated by the Food and Drug  
18 Administration, the FDA. The FDA's job is to make sure that  
19 before pharmaceutical companies sell their drugs to the  
20 general public, that those drugs are safe and effective for  
21 the particular uses that they're marketed for, they're being  
22 promoted for.

23 Pharmaceutical companies do that by submitting evidence  
24 to the FDA. They have to go to the FDA. They submit rigorous  
25 studies, right, gold standard studies, double blind, placebo

1 controlled.

2 If the FDA is satisfied that that is a drug that is  
3 safe and effective, they'll issue something called a "label,"  
4 that label for that drug that sets forth the approved uses of  
5 the drug.

6 All of us have seen this. Anyone who has taken a  
7 prescription drug, you get that package. You pull out that  
8 packet insert that comes with the drug. Okay? That's the  
9 label of the drug.

10 So just as an example, right, XYZ drug, it has a label  
11 that says it is approved to treat this condition in this age  
12 of patient in this type of dosing, and it will list all of the  
13 adverse consequences, like the warnings, the potential  
14 consequences and side effects that prescribing physicians need  
15 to take into consideration.

16 Now, the FDA's job, folks, is to regulate the  
17 pharmaceutical companies, the way they market their products,  
18 the way they conduct business. It is not to interfere with  
19 the practice of the medicine. Okay.

20 So once a drug is approved for any use, a doctor,  
21 right, under their medical license, in conjunction with their  
22 patient, they have discretion, if they think it's in the best  
23 interest of their patient, to prescribe a drug for what are  
24 known as off-label uses. Some of you have probably heard that  
25 term before, right?

1 But here's what's important. If a doctor makes that  
2 decision, the Government does not pay for that type of drug.  
3 In this case, folks, this is not a case about doctors and  
4 their discretion to engage in this conduct. We are not  
5 disputing that.

6 This case is about pharmaceutical companies and what  
7 they are allowed to market and promote their drug for. And  
8 what you will learn is that pharmaceutical companies are  
9 strictly prohibited from promoting their drugs for any  
10 off-label use, right?

11 These rules, folks, they are black and white. What is  
12 on that label is clear. You have it right there. Janssen was  
13 only allowed to market and promote its product for what was on  
14 that label and nothing else.

15 Just like with kickbacks, these are serious rules that  
16 have serious consequences. And in this case, you will learn  
17 that Janssen consistently, on a nationwide basis, promoted the  
18 two drugs at issue in this case for unapproved off-labeling  
19 uses throughout the relevant time period, uses the Food and  
20 Drug Administration had not determined to be safe and  
21 effective.

22 So with that background, let's talk about the evidence.  
23 Let's talk about the unlawful scheme. So we all know, right,  
24 if we're a certain age, that at some point in time, HIV -- HIV  
25 was a life-ending disease. Okay?

1           No one disputes that. But by the time we got to the  
2 mid-2000s, HIV was no longer a death sentence. It was a  
3 serious disease, nonetheless, but it had become manageable,  
4 right? And there were a number of effective drugs on the  
5 market that would allow these patients to live largely normal  
6 lives.

7           And as that shift in medicine, those advances took  
8 place, other health concerns of these HIV patients started to  
9 become more and more important, right? Things like heart  
10 disease, cardiovascular disease.

11           It is only after this shift in medicine that Janssen  
12 decided to jump into the HIV market. And they did so in 2006  
13 with their first drug called Prezista.

14           Then you're going to hear in detail about how  
15 Janssen -- Janssen had really, really high hopes for Prezista.  
16 The company's top executives, including their president,  
17 Glenn Mattes, they projected -- they budgeted for, they  
18 expected that drug to net -- to bring in a hundred million  
19 dollars in year one.

20           That was the company's expectation. That is fully what  
21 they anticipated. There was just one problem. When the FDA  
22 actually issued the label for Prezista, they determined that  
23 that drug was safe and effective at that time for just a small  
24 population of the HIV population, for a small group of HIV  
25 patients.

1 And all of the profit and money was over here in  
2 unapproved uses that Janssen could not market for, they could  
3 not advertise for.

4 There were two reasons for this. All right? First --  
5 this is the label for Prezista, okay? See it back there. See  
6 it over here. The label for Prezista said that it was safe  
7 and effective -- it was approved for only what are known as  
8 treatment-experienced patients. It was only a portion for  
9 treatment-experienced patients.

10 So what's a -- what is a treatment-experienced patient?  
11 Now, you're going to learn during this case the way that these  
12 HIV drugs work, they are called antiretroviral. The way that  
13 these drugs work is by suppressing the HIV virus. It prevents  
14 it from attacking the patient's immune system.

15 And virtually all of the drugs on the market at this  
16 point in time, they were effective at suppressing the virus.  
17 It wasn't until that virus -- that virus developed a  
18 resistance. It mutated and developed a resistance to that  
19 drug.

20 You will learn that it was very important at that point  
21 that the prescribing doctor, the treating physician, that he  
22 can change that patient -- he or she change that patient to a  
23 new regime of drugs, right?

24 And this would happen again and again and again down  
25 this line. And at some point -- obviously, there's not an

1 unlimited number of drugs on the market, so at some point in  
2 time, there's a legitimate risk to some of these patients  
3 might run out of viable treatment options.

4           So patients in that first level, patients that never  
5 had one of these antiretroviral drugs before, they were known  
6 as treatment-naive patients. They still are today.

7           That is by far the largest group of HIV patients during  
8 this time period, and it's by far and away the most profitable  
9 for pharmaceutical companies to sell their product to, amongst  
10 other reasons, in addition to the large population, right?  
11 These patients aren't already on another drug.

12           In other words, patients that had been on one of these  
13 drugs before, they were known as treatment-experienced  
14 patients. It's much a smaller population of HIV patients  
15 during this time period, much less money for pharmaceutical  
16 companies to make and it's harder to sell, right?

17           It's harder to get doctors to prescribe to these  
18 patients. These patients are already, by definition, on a  
19 drug, and most of them are stable at this point in time.

20           In fact -- so Janssen's own internal documents that you  
21 will see during this case, they showed that Janssen was fully  
22 aware that Prezista could be prescribed for just a small  
23 segment of the HIV population.

24           Right over there in Category H, that is the only  
25 segment that Prezista was approved for between 2006 and 2008.

1 In all of that space on the left, right, that is the majority  
2 of HIV patients, that is where the profit is for that company.

3 The second limitation on this drug is it was in the  
4 same class, right, as an equally effective drug that was  
5 already on the market and, in fact, had a large market  
6 share -- known as Reyataz.

7 Reyataz, in addition to being first, was already  
8 approved for treatment in naive patients and it also had an  
9 additional big advantage over Prezista. That drug, Reyataz,  
10 was marketed consistent with its FDA approval label as good  
11 for patients' lipids and their cholesterol levels.

12 Prezista, on the other hand, right, it had a label that  
13 warned that amongst other adverse consequences were  
14 hypercholesterolemia and hyperlipemia.

15 In other words, it was bad for patients' cholesterol  
16 and their lipids, and "lipids," folks -- you're going to hear  
17 that term throughout this case -- lipids is just a broader  
18 category of cholesterol. Cholesterol is triglycerides.  
19 Lipids is kind of the overarching -- the overarching word it  
20 comes in the industry.

21 And you're going to learn that this was a major problem  
22 for Janssen because heart disease, right, heart disease was a  
23 major problem for HIV patients during this time period,  
24 especially as most of these patients were starting to die of  
25 things other than the HIV virus.



1 Heart disease is the number one cause of death in the  
2 United States. You will learn that the HIV virus itself puts  
3 these patients at additional risk. It raises cholesterol and  
4 lipid levels, and a lot of the drugs that these patients have  
5 to take, they raise cholesterol and lipid levels.

6 So this limitation on Prezista's label, that is a  
7 major, major issue. This puts it in a competitive  
8 disadvantage to its principal competitor in the market, which  
9 is Reyataz.

10 So what does Janssen do about all this? Janssen has a  
11 budget. They projected to make a hundred million dollars.  
12 They put the money into the research. But they have a label  
13 for their drug where they can only legally market it to a  
14 small segment of the HIV population.

15 So what you will learn is they do not go back and  
16 revise their projections. They don't go lower the  
17 expectations on salespeople. They don't go to their  
18 stakeholders and say, Hey, look, we're not going to make  
19 nearly as much money as we originally told you we were.

20 You know what they do? They engaged in a systematic,  
21 top-down nationwide scheme to sell Prezista for off-label  
22 unapproved uses and to get doctors to prescribe that drug  
23 through the payment of kickbacks.

24 Between 2006 and 2008, Janssen, despite what the label  
25 says, they market Prezista as safe and effective for treatment

1 of naive patients, and they also lie. They lie. They  
2 represent that Prezista is lipid friendly, lipid neutral, and  
3 has a similar impact on patients' lipids as its competitor  
4 drug, Reyataz.

5 They basically do the opposite of what the label says  
6 with total disregard for patient safety.

7 When their second drug, Intelence -- right, their  
8 second HIV drug, Intelence -- comes on the market two years  
9 later in 2008, they do the exact same thing.

10 Intelence was approved for even a smaller segment of  
11 the treatment of the experienced population. Janssen's own  
12 internal documents show that only 7 percent of the HIV  
13 population was eligible to take Intelence on-label. But just  
14 like with Prezista, they market that drug as safe and  
15 effective for treatment-naive patients.

16 Folks, you will learn, not only is that an illegal  
17 off-label message the company knew it wasn't allowed to  
18 promote, but that created legitimate safety risks for  
19 patients.

20 Intelence was what is known as a salvage drug. It was  
21 a late-term drug that was intended to be prescribed after  
22 other drugs had been gone through by that patient.

23 So you will learn that if Intelence was prescribed too  
24 early, right, as it was being promoted for, created the  
25 legitimate risks that other drugs that that patient could have

1 took first might lose their effectiveness, right?

2 So it had to be a potential to move that patient more  
3 quickly down that line to the point at which they may not have  
4 viable treatment options.

5 The second limitation on Intelence was that the label  
6 said it had to be taken twice a day, right, and that made it  
7 really hard to sell, right? HIV patients, probably not  
8 surprisingly, they have to take a ton of pills a day.

9 So all of those patients, they'd rather take a drug  
10 that they only need to take once a day as opposed to twice a  
11 day. And their prescribing doctors, they have the same  
12 preference, and those prescribing doctors -- they have the  
13 same preference for good reason.

14 Because one of the easiest ways for an HIV patient to  
15 develop resistance to a drug is by missing their doses, right?  
16 You're going to hear about dosing, how important that is,  
17 right, adherence to their treatment regime.

18 And all of the research in this area, years of  
19 practical experience and then just common sense says that  
20 patients are far more likely to take their pills as prescribed  
21 if they only need to take one pill -- remember to take one  
22 pill a day as opposed to two.

23 And you will see, folks, that Janssen knew all this,  
24 right? You will see in their internal documents, you will  
25 hear from witnesses, Janssen was fully aware of patients'

1 preferences, and they were fully aware of prescribers'  
2 preferences.

3           So what do they do? They market Intelence as a safe  
4 and effective for once-daily dosing, even though the FDA to  
5 this day has not approved Intelence for that use.

6           This is what you see, folks. With each of those four  
7 off-label messages that I discussed, you see this consistent  
8 theme, right, of Janssen putting its profits -- its bottom  
9 line over compliance with the law, laws that it knows it has  
10 to adhere to, and the safety of patients.

11           And you will learn -- folks, you will learn that  
12 Janssen did everything in its power -- everything in its power  
13 to spread those four off-label messages to prescribing doctors  
14 throughout the country.

15           We are going to bring you that evidence. We will bring  
16 you that evidence directly from the source. We will bring you  
17 the people that you would most want to hear from if you were  
18 to ask yourself, Are these allegations true?

19           Folks, Sara Strand was the regional business director  
20 for Janssen for the entire eastern United States. All right.

21           Mark Wilhelm, he was a key account manager. He was  
22 responsible for Janssen's most important doctors, their most  
23 important hospitals and facilities and he was in charge of the  
24 key accounts for the entire western United States.

25           These are high-level employees within Janssen's

1 organization. They have access to the top-level executives of  
2 the company, including the president, Glenn Mattes.

3 Donna Graham, she's going to be our first witness.  
4 You're going to hear from her later this afternoon. She was a  
5 salesperson for a number of years. Eventually she was  
6 promoted to be the company's national -- one of their national  
7 training directors.

8 She was responsible for training Janssen's sales force  
9 of a hundred people strong, right, across the country. She  
10 was instrumental in pushing down these off-label messages that  
11 were coming from the top.

12 Christine Brancaccio, Jessica Penelow, Matthew Grooms  
13 and Joseph Holshoe, each of those individuals were  
14 salespeople. They were salespeople that were on the ground,  
15 inside doctor's office on a day-to-day basis, selling these  
16 drugs in different regions across the country.

17 Folks, each of these witnesses, right, each of these  
18 seven witnesses is going to take that witness stand. They're  
19 going to swear to you to tell the truth, and they are going to  
20 tell you that Janssen consistently marketed its drugs for  
21 unapproved off-label uses, that the company paid doctors  
22 kickbacks to get them to prescribe the drug and that that  
23 direction, that direction came directly from the top of the  
24 company, including from the president, Glenn Mattes.

25 Folks, five of these individuals have no financial

1 stake in this case whatsoever, right, absolutely nothing to  
2 gain. Might have some stuff to lose but nothing to gain. And  
3 these witnesses, they are not just going to talk about other  
4 people, right? They're not going to say, I saw people do  
5 this, I was told to do this.

6 They're going to point the finger not just at Janssen.  
7 They're going to point the finger at themselves. They are  
8 going to tell you, I personally engaged in this conduct. I  
9 knew it was wrong, but I personally engaged in this conduct  
10 because I felt like I had no choice, right?

11 The company -- if people did not do what the company  
12 wanted, they were terminated. And you will hear about that.  
13 They felt they had no choice or they were going to lose their  
14 jobs.

15 In -- these folks, they are not rookie salespeople.  
16 These are experienced salespeople. They are used to pressure.  
17 They are used to goals. And they're going -- they have never  
18 seen an environment like they did at Janssen. The pressure  
19 and the blatant disregard for the law and the sole unseen  
20 focus on profits.

21 Folks, Janssen is full of smart people, right? These  
22 guys, they know the rules, right? They know the rules better  
23 than anybody. They've been down this road before, and you're  
24 going to hear about that. So they know, right?

25 So rarely do they directly tell salespeople to go sell

1 off-label. Now, as you get kind of to the lower -- you know,  
2 lower managerial levels of the company, the instructions start  
3 to become more and more explicit. The people at the top,  
4 they're very, very careful, and they certainly don't put it in  
5 writing. All right?

6 Now, Janssen's a massive organization. This is almost  
7 an eight, nine-year scheme. There's millions and millions of  
8 documents exchanged, so some stuff slips through, and we're  
9 going to show you those documents, and we have them.

10 But as a matter of policy, they do not put this stuff  
11 in writing. This is a presentation. All right. Presentation  
12 from their compliance department. All right. The department  
13 that is supposed to be stopping violations of the law.

14 This is what their compliance department is telling  
15 employees, right? They tell them -- they tell them all  
16 communications matter. They tell them all written  
17 communications matter, right?

18 Everything is a document in the eyes of the law. They  
19 tell them, Well, hey, talk in person, talk on the phone,  
20 right, versus sending multiple emails, right, versus putting  
21 things in writing.

22 Folks, they're not shy about it. They explicitly tell  
23 their employees why they're doing this, right? Because emails  
24 and other written documents, they might end up in the hands of  
25 Government regulators, and they specifically say the FDA.

1           So, folks, everything is kind of done with a wink and a  
2           nod, right? Basically, Janssen -- they put absolutely  
3           unrealistic expectations on these salespeople, and they  
4           threaten to fire them if they don't meet those goals.

5           And then they go hand them, right -- they hand them all  
6           of the tools, all of the off-label tools that they would need  
7           to promote these drugs into segments they're not supposed to.

8           But then they try to wipe their hands of it, right?  
9           They try to cover their tracks. This is just for internal  
10          purposes, right, for educational purposes, knowing full well  
11          that these employees are taking this stuff out in the field  
12          and selling these drugs off-label.

13          For example, folks, you'll learn that Janssen had  
14          national salespeople. Right? They gather up the sales force  
15          from across the country once or twice a year, and  
16          the executives, they have them break out into, you know,  
17          groups by region. Okay?

18          Janssen would actually have these employees -- they  
19          would role play; they would practice; they would rehearse  
20          selling these drugs off-label. Right? I mean, sometimes  
21          they'd do it with one of their managers. Right?

22          You'll hear the name Nancy Bartnett. She was heavily,  
23          heavily involved in the scene.

24          Sometimes Janssen would actually hire outside actors,  
25          like doctors, to come in so their salespeople could practice.



1 And people are going to tell you that from the witness stand.

2 Then, of course, Janssen tries to cover its tracks. It  
3 tells them, Well, this is just an educational exercise,  
4 knowing full well that they are taking this stuff out into the  
5 field into doctors' offices and selling these drugs off-label.

6 Janssen also spends inordinate amounts of time, right,  
7 way too much time educating their employees, their sales force  
8 on what are known as off-label studies. You'll hear about  
9 these during the case, but basically what they are, these are  
10 studies that say, regardless of what the label says, Intelence  
11 is actually good for once a day. Or Prezista is actually okay  
12 for patients' lipids.

13 None of this stuff is FDA approved. All of it, by  
14 definition, illegal for these people to use for promotional  
15 purposes. Right?

16 And what you will see is that these studies, they're  
17 not worth the paper they're written on. I mean, this is an  
18 example, folks, of one of those studies. This is a study that  
19 they're discussing, comparing Prezista to Reyataz. I mean,  
20 you can probably see what doesn't make sense about that right  
21 there. This is an HIV drug that they're using in a study on  
22 healthy patients. Right? Patients that don't even have HIV.  
23 And they're studying cholesterol and lipid levels; they're  
24 doing it for 21 days.

25 I mean, you don't need to be a doctor, right, to know

1 that 21 days isn't going to show you much about whether  
2 something impacts your cholesterol or your lipid levels.

3 And you can see that even the company's employees,  
4 right, they're asking, I don't understand why the  
5 investigators did this other than just trying to improve the  
6 results of the study.

7 But Janssen takes off-label, illegal studies like this,  
8 and they teach their employees it. They make them memorize  
9 the conclusions of the study. They actually give them binders  
10 of these things to carry around in the field. And they tell  
11 them, they emphasize, Hey, doctors need to know this  
12 information.

13 But then they put a little disclaimer -- right -- a  
14 little disclaimer, educational purposes only. Again, knowing  
15 full well, full well that stuff is going to be taken out into  
16 the field and used to sell these drugs to population segments  
17 and for uses that aren't approved by the FDA, the FDA has not  
18 found to be safe and effective.

19 You will also learn that Janssen would abuse things  
20 called medical information requests, or MIRs. Okay? These  
21 are basically ways that a doctor, right, in writing could  
22 request specific off-label information from a company for a  
23 specific patient from the scientists, from the doctors, the  
24 medical people within Janssen. Not the salespeople but the  
25 medical people.

1           You'll hear more about these. All you really need to  
2 know right now is that under ordinary circumstances, right,  
3 MIRs are pretty rare. Right? Salespeople say, Usually I get  
4 maybe one a month. In Janssen's own policies and the law make  
5 crystal clear that they have to be requested by the doctor.  
6 Right? They can't be used as a promotional tool. The  
7 doctor's request has to be spontaneous. Okay? This is for  
8 education, scientific; it's not promotional.

9           What the company does, folks, it takes this; it turns  
10 it on its head; it teases their employees to prompt these  
11 MIRs. Sometimes people just offer them. Sometimes they just  
12 take the end result and hand them out to the doctors. They  
13 take something that is supposed to be scientific and  
14 spontaneous, the salesperson is supposed to have no control  
15 over whatsoever, and they turn it into a sales tool to spread  
16 this off-label information throughout the country. Right?

17           They basically take something that the salespeople or  
18 the salesperson should have really no involvement in  
19 whatsoever other than passing on the request, and they turn it  
20 into a metric by which to judge the salesperson's performance.  
21 Right? Those folks that have high numbers -- and they track  
22 all this by salespersons like no other pharmaceutical company  
23 does -- people that have high numbers, they're held out as an  
24 example. Those that have low numbers, they're reprimanded.  
25 And you'll see this in their documents. Okay?

1           This is a Janssen document that you will see in this  
2 case. You can see there, in the second bullet point, MIR  
3 forms are being widely used to get the 48-week data -- you  
4 will learn that that's off-label, illegal information for them  
5 to spread -- into the hands of all our customers. And look  
6 where it is. Right? I told you these are supposed to be  
7 spontaneous. Janssen should have no control whatsoever when a  
8 doctor requests this. It's in their business plan. It's a  
9 tactic that they implemented to sell the drug.

10           Folks, you will ultimately learn that Janssen used all  
11 of these methods I've discussed and more to spread these  
12 off-label messages to doctors throughout the country. Those  
13 people on that sales force that embrace these messages, they  
14 succeeded. And those that didn't, they were put on  
15 performance improvement plans, and they were ultimately  
16 terminated from the company.

17           And, in fact, you're going to hear that at one point  
18 the president of the company put 60 percent of the Janssen  
19 sales force on a performance improvement plan. And all of  
20 these salespeople are going to talk to you about the toxic  
21 environment within Janssen and how everyone was pushed and  
22 pushed and how off-label information was disseminated, and at  
23 the end of the day, people had no choice: Either get on board  
24 with the company's policy, or get out the door.

25           The second part, right, of Janssen's unlawful scheme

1 was the illegal use of what are known as "speaker programs."  
2 This is basically the simplest form. This is where a  
3 pharmaceutical company pays one doctor to go talk to other  
4 doctors about their drug.

5           You will learn that speaker programs are highly  
6 regulated, they are highly risky, and that Janssen knew all  
7 this. Right? It knew all this because it had been down this  
8 road before. It had been in trouble for this exact stuff  
9 before. These programs are risky, right, because they cannot  
10 be used to spread off-label information to these doctors, and  
11 those payments cannot be used as an inducement. Right? You  
12 cannot give doctors speaker payments to get them to prescribe  
13 more of your drug. You cannot induce them. It is a kickback.  
14 And you will learn that that is exactly what Janssen did.

15           I told you earlier Janssen paid doctors over  
16 \$17 million in speaker payments. It generated almost \$230  
17 million for the company in return -- ROIs. That's a term  
18 you're going to hear in this case, return on investment.

19           Some of these top prescribing doctors, they make 200-,  
20 300-, \$400,000 a piece. And all of this is done to influence  
21 their prescribing. Right? Janssen expected, and they  
22 received, prescriptions in exchange for these payments. These  
23 witnesses will tell you, you'll see in the documents these  
24 speaker fees were used to get low prescribers, right, that  
25 were prescribing other HIV drugs to get their Prezista and

1 their Intelence prescriptions up; those payments were used to  
2 award high prescribers, keep them prescribing at a similar  
3 level; the more that these speakers were willing -- or excuse  
4 me. The more that these doctors were willing to prescribe,  
5 right, the more opportunities they got to speak and get paid.  
6 And Janssen tracked all this. They tracked the number of  
7 prescriptions by speaker. Right? And those speakers that  
8 didn't prescribe, they got cut from the program.

9 And you're going to hear that education, credentials,  
10 speaking ability, all of that was second fiddle. All right?  
11 What Janssen really cared about, is this doctor going to  
12 prescribe our drug, and is this doctor willing to go speak  
13 off-label to other doctors at these promotional events?

14 In fact, see, that was one of the criteria. Janssen  
15 specifically sought out doctors that were willing to promote  
16 these illegal, off-label messages. But, of course, I told  
17 you, Janssen is smart. These guys are sophisticated players.  
18 They have a huge compliance department. They know the rules.  
19 Right? They've been in trouble for this stuff before.

20 So they don't, folks, they don't -- they cannot put on  
21 speaker programs that are Janssen-sponsored and just have the  
22 doctor speak off-label. The FDA would come crashing through  
23 the doors. So what do they do? Well, they had a slide deck  
24 they're going to present that they have to send to the FDA for  
25 approval. Right? They send the slide deck to the FDA. It's

1 all on-label, perfectly lawful information. They have the  
2 slide deck. It comes back, a slide backup off-label slides.  
3 And then Janssen goes and they put plants, they put plants in  
4 the audiences of these events to ask off-label questions.  
5 Right? To make it look like that discourse is completely  
6 spontaneous. Right? To separate themselves from that  
7 conduct, knowing full well their own policies say they can't  
8 do this. They know they can't do it, and they do it  
9 nonetheless.

10 And you will hear that these practices were pervasive.  
11 Right? They were using plants spreading off-label, illegal  
12 messages in virtually in all of these speaker programs.

13 Finally, you'll hear about the excesses of these  
14 programs. Right? Now, a lot of these -- a lot of these  
15 witnesses, they were salespeople before or after Janssen and  
16 other pharmaceutical companies, so they've done these speaker  
17 programs before. And they'll tell you they're supposed to be  
18 educational, right, they're supposed to be proportional to a  
19 need, and they're supposed to spread on-label information,  
20 right, approved uses of the drug.

21 So most of these programs, folks, they have maybe a  
22 speech a month, a speech a quarter. Janssen averaged three  
23 speeches every single day during the almost eight-year  
24 relevant time period. They gave almost 9,000 speeches during  
25 that time period, right? many of which are at high-end

1 restaurants -- or at least some of which are at high-end  
2 restaurants. Right? Doctors are wined and dined, free steak  
3 dinner, free alcohol.

4 Most of these programs, they rely on a small group of  
5 speakers. They look at doctors that actually speak to a  
6 sitting audience. Right? Someone who has particular academic  
7 credentials, was involved in the actual research of the drug.

8 Janssen had hundreds and hundreds of different  
9 speakers. Right? Basically, anybody that would prescribe the  
10 drug or speak off-label, they were eligible to get paid by  
11 Janssen. And these salespeople we're going to talk about,  
12 sometimes, you know, the salespeople, they were in charge of  
13 these speaker programs, and they were responsible for giving  
14 the venue together. And they're going to tell you, Sometimes  
15 we struggled just to find people just to put in the audience,  
16 right, because there was so little need for another speech.  
17 They had to do it, right, because they had to create that  
18 facade so they can give the doctor a check.

19 You'll learn that Janssen paid doctors to train other  
20 doctors for these speaker programs, who are then trained to  
21 listen to the training. Janssen would fly doctors to  
22 five-star resorts to participate in, quote-unquote, marketing  
23 surveys, all expenses paid, right, beautiful locations, come  
24 in the night before, wined and dined. Right? Best  
25 restaurants in town, meals, alcohol, all with the goal of



1 influencing their prescribing, in getting them to prescribe  
2 the company's drugs.

3 Folks, this, right here, this is an internal Janssen  
4 document that we received in discovery. This is what their  
5 speaker programs were about. Right? Doctors and dollar  
6 figures. How many dollars has that doctor generated for us?

7 You will see that, folks, during these times when the  
8 federal Government was cracking down on these programs because  
9 of their excesses, because of their risks, at a time when  
10 Janssen itself was in trouble for that same conduct, their  
11 outside vendor who they hired told them they had the highest  
12 spend per attendee of any company they had seen in the last  
13 ten years.

14 Look, these programs, they were about one thing at the  
15 end of the day. Right? They were about buying the loyalty of  
16 these doctors. Right? Taking them from being loyal to Abbott  
17 or another pharmaceutical company, getting them to be loyal to  
18 us so they will prescribe our drug.

19 And you know what, folks, it worked. It worked.  
20 You're going to hear expert testimony -- I'm going to talk  
21 about him a little bit more in a second -- from Professor  
22 Israel Shaked. He is a statistician. Right? He's looked at  
23 the numbers; he's examined the steps. And you know what he's  
24 going to tell you? He's going to tell you that the statistics  
25 bear out, they demonstrate that the more Janssen paid these

1 doctors, the more of the drug they prescribed. And it went up  
2 and up down the line.

3 Folks, in addition to Professor Shaked, who I will talk  
4 about in a second, you're also going to hear from other  
5 experts. Dr. Aaron Glatt, up there in the upper left-hand  
6 corner, he is an HIV specialist. He has been treating this  
7 disease for nearly 40 years, basically since the inception of  
8 the epidemic.

9 He is the chief of medicine and the head of infectious  
10 diseases at a prestigious hospital. Right? He's a professor,  
11 teaches classes, oversees hundreds and hundreds of other  
12 doctors. He's going to tell you that the messages that  
13 Janssen was spreading, none of them were supported by the FDA  
14 approved label during the relevant time period. None of them  
15 were supported by relevant medical guidelines. Right? In  
16 other words, that promotion was for uses that weren't  
17 medically accepted. Right? Uses that weren't reasonable and  
18 necessary for patients.

19 Dr. Glatt is also going to talk to you about these  
20 off-label studies, and he's going to tell you that these  
21 studies -- first of all, they're so many, often funded by  
22 Janssen, often conducted by multiple Janssen employees. He's  
23 going to tell you they were fatally flawed. Right? It had  
24 none of the academic -- or none of the scientific rigor that's  
25 required for FDA approval.

1 Virginia Evans. Virginia Evans was a federal  
2 prosecutor for nearly 25 years. Right? She investigated  
3 health care offenses just like the ones in this case. She's  
4 become a compliance expert.

5 She's going to tell you that Janssen's speaker  
6 programs, they violated well-established Government standards  
7 for how these programs are supposed to be funded. They  
8 violated Janssen's own internal policies.

9 And Ms. Evans is also going to show you, folks, she is  
10 going to show you that a compliance program, all right, no  
11 matter how pretty it looks on paper, no matter how many  
12 documents a company can have, how many policies they have, it  
13 is absolutely worthless if it doesn't actually stop  
14 violations. Right? The purpose of compliance is to stop  
15 violations; it's not to cover your tracks. And that is a  
16 consistent theme that you're going to hear in this case.  
17 Janssen puts one thing in writing, and they tell their  
18 employees to do the exact opposite.

19 Folks, George Sillup, a prof- -- he is a professor of  
20 pharmaceutical advertising, of marketing. All right? He  
21 actually used to work in sales and marketing for Johnson &  
22 Johnson, several years ago. In fact, he's going to talk to  
23 you -- this man, he carries around the Johnson & Johnson  
24 credo. That's how much respect he had at one point for the  
25 company. And this credo talks about -- and this is great.

1 They may show it to you. It talks about putting your  
2 employees first, your customers first, right, patient first.  
3 You know what's at the very bottom of their credo? Profits.  
4 And the credo says, We have to pay for our mistakes.

5 And you know what you will learn, ladies and gentlemen?  
6 At some point Janssen, right, Janssen took a wrong turn,  
7 right? They flipped the script. They ripped the credo up.  
8 You guys get to decide. But they went the other direction.

9 Professor Sillup is going to talk to you folks about  
10 marketing. He studied this stuff. He's going to tell you  
11 that pharmaceutical marketing, it works. Right? All of the  
12 literature, the research, the practical experience over the  
13 years, it's a fact the stuff works.

14 He's also reviewed the documents in this particular  
15 case, and he's going to tell you that these off-label  
16 messages, that they worked, they influenced doctors.

17 He's also going to tell you that he's looked at the  
18 broader evidence in this case, right, the internal Janssen  
19 documents, the emails. He's going to tell you that that  
20 evidence, not the testimony of these witnesses, but that  
21 broader evidence, right, it supports what the Relators are  
22 saying in this case, not Janssen.

23 Finally, I mentioned Professor Israel Shaked. He is a  
24 retired professor of finance, economics, and statistics at  
25 Boston University. He's a brilliant, brilliant professor.

1 He's going to show you the damages that the Government  
2 suffered, the money that Janssen wrongfully took from the  
3 Government and owes back.

4 He's also going to show you, he's a going to  
5 demonstrate to you with statistics that Janssen's off-label  
6 marketing worked. He will show you and tell you that those  
7 doctors that were exposed to these off-label messages, they  
8 prescribed the drug off-label more than those doctors know.  
9 And here's the important part, right? The more they're  
10 exposed, the more they prescribe.

11 It's the exact same thing, that Janssen kickback  
12 sales-schemer payments. Right? The doctors they pay  
13 prescribe more than the doctors that don't. The more they pay  
14 the doctors, the more they prescribe.

15 Professor Shaked is going to tell you that the chances  
16 of all this just being a coincidence, a statistical  
17 coincidence, is one in a billion. It's like winning the  
18 lottery.

19 Finally, I want to end by just talking about a few key  
20 issues in this case. Folks, none of Relators' witnesses are  
21 going to take this witness stand and tell you these are bad  
22 drugs. Okay? That's not what this case is about. But these  
23 drugs were approved for a very, very limited purpose.

24 And none of these witnesses are going to take the stand  
25 and tell you it's wrong to make money or wrong for

1 pharmaceutical companies to make money. Right? We all need  
2 to make money. There's nothing wrong with that.

3 But what was wrong was Janssen making money by  
4 illegally marketing their drugs for uses that the FDA had not  
5 approved. You know what, folks? They're not going to tell  
6 you any different. They are not going to tell you, because  
7 that was illegal.

8 When Janssen would market these drugs for off-label,  
9 unapproved uses, they were putting patients -- they were  
10 taking them into dangerous territory. Right? This is  
11 territory where the drug isn't proven, the drug is potentially  
12 unsafe, and it's certainly not paid for by the federal  
13 Government.

14 Another issue in this case is going to be the  
15 credibility of witnesses. I told you earlier: Seven Janssen  
16 insiders, five of whom have no financial interest in this  
17 case, all of whom are going to tell you the same thing. And  
18 you guys are going to get to decide. Okay? You get to ask,  
19 Are what these witnesses saying, is it consistent with one  
20 another? Do they remember those types of details that I would  
21 expect to hear, right, from someone that was telling the  
22 truth? Do they speak with conviction and passion?

23 And you're going to get to compare that to what you  
24 hear from Janssen witnesses. And what you hear from them is  
25 going to be a lot less satisfying. "I don't remember. I

1 don't recall. I wasn't there."

2 You guys can decide.

3 Look, we're not going to make you wait until they put  
4 on their case, folks, for you to hear from these witnesses.  
5 We are going to call Janssen's key witnesses in our case in  
6 chief. And we're going to put them on the witness stand, and  
7 we're going to let you hear them for yourselves. We're going  
8 to call their president, Glenn Mattes. Right? We're going to  
9 call their chief compliance officer for a large portion of  
10 this time period, Catherine Kaucher. We're going to call  
11 Nancy Bartnett. Right? You're going to hear from them. You  
12 might hear from them on recording.

13 Another issue in this case, folks, is going to be  
14 Janssen's compliance program. And what the evidence will show  
15 about Janssen's compliance program is that it does not work.  
16 It doesn't work, because it was the same compliance program  
17 that was in place in 2010 when Janssen and its affiliates got  
18 in trouble and had to settle allegations for this exact same  
19 conduct, right? Off-label marketing, different drugs, same  
20 conduct. Marketing drugs for illegal, off-label uses.

21 It's the same compliance department that was in place  
22 in 2013, all right, when Johnson & Johnson and Janssen, right,  
23 settled allegations. Again, same allegations in this case:  
24 marketing their drugs for unapproved uses, paying kickbacks to  
25 doctors through speaker programs.

1 And in addition to showing their compliance department  
2 doesn't work, folks, all of this shows you they know, they  
3 know this is wrong, right? They know they can't do it. They  
4 know the Government cares about it, and they know the  
5 Government requires the money to be paid back when they do.

6 This is how Janssen's compliance department worked.  
7 These are the types of warnings that the compliance department  
8 would give on paper internally. Right? False Claims Act,  
9 right, largest health care recovery by the United States,  
10 laboratories excluded from federal programs. Right? You  
11 can't offer physicians trips and other benefits in exchange  
12 for prescriptions. This is what the compliance, at least the  
13 presentation, is telling them not to do.

14 But, look, what did I just tell you the evidence is  
15 going to show, ladies and gentlemen? They basically take the  
16 compliance warnings, and they turn it into their business  
17 plan.

18 The final issue I want to talk to you about is some of  
19 these doctors. Right? There were over 5,000 influenced  
20 doctors. Those doctors received hundreds and hundreds of  
21 thousands of marketing contacts from Janssen. The reason we  
22 know that is because they tracked it all. All right? So we  
23 received that information in discovery. Over 300 of those  
24 doctors are paid speakers. They are on Janssen's payroll.

25 Folks, out of that universe, out of that universe of



1 doctors, right, a couple of them may show up in this  
2 courtroom. They may testify. And they might tell you, Hey, I  
3 wasn't even paid to -- I didn't change my behavior. Folks,  
4 Janssen itself is saying something different to you during the  
5 relevant time period. Janssen spent hundreds of millions of  
6 dollars on its marketing, had a sales force of a hundred  
7 strong, 9,000 speaker programs. Year over year they put more  
8 money into the marketing budget. The whole purpose of that  
9 was to influence doctors.

10 Folks, and their own documents show that it worked.

11 Don't listen to what Janssen tells you today. Listen  
12 to what they told you back then, during the relevant time  
13 period. This is what Janssen was saying about its ability to  
14 influence doctors during the relevant time period. We change  
15 prescribing behavior, right? And that's not just empty  
16 conjecture. They have the stats. In fact, they have the  
17 tracking to back it all up. Janssen paid outside vendors to  
18 tell them, How do we influence doctors? The outside vendors  
19 told them speaker programs are an effective way to make a  
20 lasting impact on prescribing behavior.

21 And the doctors, right, the doctors told Janssen the  
22 same thing. I mentioned these marketing surveys, right, that  
23 would be at these five-star resorts. This is what the  
24 doctors -- this one is in Puerto Rico -- this is what the  
25 doctors would tell Janssen. Right? The physicians -- the

1 marketing campaign had been impactful in the past. There is  
2 an opportunity to change our current prescribing habits  
3 through marketing and education.

4           You know what, folks? Professor Sillup, he is going to  
5 tell you that this marketing worked, and Professor Shaked, he  
6 is going to show you that it worked with the statistics. I  
7 guarantee you, Janssen will not have a response to Professor  
8 Shaked's statistics, because they haven't had a statistician  
9 look at any of this.

10           Folks, by the end of this case, you will have heard  
11 from seven, seven Janssen insider witnesses: top of the  
12 company, down to the ground. Right? Each of them is going to  
13 take that witness stand; they're all going to tell you the  
14 same thing. Janssen paid doctor kickbacks. They marketed the  
15 drugs for unlawful, unapproved uses, and that direction came  
16 from the top of the company.

17           You will see documents that corroborate, more documents  
18 than I showed you now, that will corroborate what those  
19 witnesses are saying. You will hear expert testimony that  
20 shows you that what they're saying is true. And when you sit  
21 back, like the judge told you, right, common sense. Right?  
22 That's really where all of this will end up when you're back  
23 there deliberating. Your common sense. Your experience.  
24 What makes sense to you.

25           When you sit back and you apply your common sense to

1 the weight of the evidence that you see, right, we are  
2 confident that you will come to the conclusion that what  
3 Ms. Brancaccio and what Ms. Penelow alleged, it happened.  
4 Right? And that is your job as factfinders, to decide did  
5 this happen?

6 We will ask you to find Janssen liable, hold them  
7 responsible for their conduct, make them return, folks, make  
8 them return the over \$700 million that they unlawfully,  
9 illegally, and wrongfully took from the Government and  
10 retained for the last 12 years.

11 Thank you.

12 THE COURT: All right. Thank you, Counsel.

13 Folks, I think we'll take a ten-minute break at this  
14 point before we do the defense opening. But I want to -- a  
15 quick question for the jurors. Look, I anticipate that these  
16 monitors are going to be used throughout the trial. I don't  
17 know how great my 1950s movie projector screen is out there.  
18 I know that jurors on this side usually refer to this monitor.  
19 And that monitor seems to be pushed back too far for jurors  
20 that are farther away for me to use.

21 Do you want me to make some adjustment during the break  
22 to that monitor, folks? All right. I'm going to make some  
23 adjustments. We'll figure out the seating where you folks are  
24 with the Relator's side. But I think that monitor has got to  
25 be in better usage, I think, moving forward.

1           So with that, let's take a ten-minute break, folks, and  
2 then we'll be back.

3           THE DEPUTY COURT CLERK: All rise.

4           (Jurors exited courtroom.)

5           THE COURT: Folks, you may be seated.

6           I don't know what to do here, but I want to make some  
7 adjustments during the break to that monitor. It's pushed  
8 back too far. I wasn't going to interrupt the opening. I  
9 don't think it impacted the opening at all.

10           But I think moving forward with documents or other  
11 exhibits, in my experience in this courtroom, a lot of jurors  
12 on that side always look to that monitor. All the jurors on  
13 this side always look to this monitor.

14           This is pretty far, and based on lighting and all the  
15 other things, sometimes it's difficult to see. Although  
16 they're happy to refer to it, and I'll keep it open.

17           So can we take -- can we figure out how we're going to  
18 see it over here and how we're going to adjust that monitor?

19           Or, Kim, maybe you can work over there and just figure  
20 this out.

21           All right. I mean, we're in recess, folks, for ten  
22 minutes. Do what you need to do, but I'm going to have to  
23 play with this monitor.

24           (A short recess occurred.)

25           THE DEPUTY COURT CLERK: All rise.

1 THE COURT: Ms. Brown, are we ready to get the jury?

2 MS. BROWN: We're ready. Thank you, Your Honor.

3 THE COURT: All right. Let's go.

4 THE DEPUTY COURT CLERK: All rise.

5 THE COURT: Folks, everybody be seated.

6 Really quick on this monitor, should we just push it  
7 back a little bit? Is that a little bit in your folks field  
8 or is it sufficient where it is? Keep it?

9 All right. I'm going to keep it as is for now, and  
10 then we'll restructure seating at another time.

11 Ms. Brown, are you all ready for your opening  
12 statement?

13 MS. BROWN: I am, Your Honor.

14 THE COURT: You may proceed when you're ready.

15 MS. BROWN: Is my mic on? Yeah. Okay.

16 Good morning, everyone. Thank you all for coming back  
17 today. We met a little bit yesterday at sidebar, but my name  
18 is Alli Brown, and I'm here with my colleagues Geoff Wyatt and  
19 Brad Klein on behalf of the folks at Janssen.

20 So the lawyer for the Relators just said some real bad  
21 things about Janssen, and he made some very serious  
22 allegations about the people who work there.

23 And what you just heard is that in this case, the  
24 Relators, Ms. Brancaccio and Ms. Penelow, have asserted things  
25 like we were liars. We just heard this morning claims that we

1    lied, that we intentionally misled HIV doctors and that we  
2    bribed them to prescribe medicines they otherwise shouldn't  
3    have.

4           And Ms. Penelow and Ms. Brancaccio have chosen to raise  
5    those allegations for the first time now in a lawsuit for  
6    almost a billion dollars of which they stand to gain a  
7    significant portion. And the fact is that's their right.

8           Our great justice system gives them the absolute right  
9    to raise for the first time, in a lawsuit for a whole lot of  
10   money, the allegations you just heard about. But the law also  
11   places on them a burden.

12           Relators and Relators alone have a burden in this  
13   lawsuit of proving to you that all the horrible things we just  
14   heard about are true and are supported by the evidence and are  
15   supported by the facts.

16           This case is about medicines that were reimbursed by  
17   the Government, and the Relators and the Relators alone have  
18   the burden of proving to all of you that it is more likely  
19   than not, right -- they got to get enough evidence on that  
20   scale to lift it up to more than 50 percent.

21           They have the burden of proving to you that it is more  
22   likely than not that our Government was defrauded when it paid  
23   for HIV medicines that were prescribed to HIV patients, that  
24   were used to treat HIV and work.

25           There is no one who's going to come into this courtroom

1 and tell you that these medicines didn't work because that's  
2 not the truth. There's no one who's going to come in here and  
3 tell you that these HIV patients didn't need HIV medicines  
4 because that's also not the truth.

5 In fact, during the course of the lawsuit, you are  
6 going to get to hear from some of the brave men and women who  
7 have been doctors on the front lines of treating HIV for  
8 decades, doctors who have seen themselves patients stay alive  
9 because of the two medicines that are at issue in this  
10 lawsuit.

11 These doctors prescribed these medicines. They met  
12 with our sales reps. They were speakers in our speaker  
13 program. And you're going to get to hear from some of them  
14 who are going to come in here and tell you that the  
15 allegations that are being made in this lawsuit are not true  
16 and are not supported by the evidence and are not supported by  
17 the facts.

18 What the evidence in this case is going to show,  
19 everyone, is that HIV is a terrible disease and that not that  
20 long ago it was a death sentence.

21 HIV, you're going to hear, is -- has taken the lives of  
22 almost 40 million people. 86 million people have been  
23 affected with HIV since it was first discovered in 1981. And  
24 unfortunately, almost half of those folks have died from the  
25 disease.

1           You're going to hear the trajectory of HIV. So it  
2 started actually in California. There were a group of folks  
3 who were diagnosed with a sort of rare cancer that doctors  
4 couldn't figure out what it was, but they knew it was  
5 compromising these patients' immune systems, and this was  
6 1981. It wasn't even that long ago.

7           And by the end of that year, researchers had officially  
8 discovered the disease HIV. There were about 380 people who  
9 were diagnosed with HIV in 1981. By the end of 1981, almost  
10 half of those folks had lost their lives, and in large part,  
11 the reason was because we had no idea how to treat this deadly  
12 disease when we first discovered it in the 1980s.

13           By the middle of the 1980s, HIV had truly become an  
14 epidemic, and by the end of the 1980s and into the 1990s, we  
15 were losing the battle of how to figure out to keep these  
16 folks alive because we had not discovered a medicine that  
17 could fight the virus.

18           We're going to bring you an HIV expert who will come in  
19 here and talk about the disease and talk about what medicines  
20 like Prezista and Intelence are doing to try and suppress the  
21 virus, to try and keep the virus at an undetectable level.

22           But at this time period in the 1980s and the beginning  
23 of the 1990s, we didn't have any medicine that could do that.  
24 And so one of the things that happened is our Government  
25 responded.



1           You're going to hear that in 1992, the FDA created  
2 something called the accelerated drug approval process,  
3 because something many of you may know is that it takes a very  
4 long time to get a medicine approved in our country.

5           You got to do a lot of studies. The FDA has to review  
6 them. There has to be a label that gets approved, and that's  
7 a good thing, but it can take time. And when it came to HIV,  
8 we didn't have time in the 1990s because people were  
9 unfortunately passing away.

10           So the Food and Drug Administration came up with this  
11 drug approval process that allowed us to get this first wave  
12 of HIV medicines to market a lot faster than we normally  
13 would.

14           And this HIV expert that we have who's going to come  
15 in, Dr. Rosenberg, he sort of helped me learn a little bit  
16 about HIV as I was getting ready to talk to all of you, and  
17 here's how he described it to me, which I thought was helpful.

18           He said, Alli, HIV is like a train, like, barreling  
19 down the tracks to a cliff, and that cliff is AIDS, and he  
20 said, What we as doctors are trying to do when we're trying to  
21 find the right medicine for these types of patients, we're  
22 trying to do two things: One, we're trying to put the brake  
23 on the train. We are trying to slow down the replication of  
24 the virus so that the body can fight infections and so that  
25 the body's T-cells, the part of the body that fights

1 infection, can increase.

2 And so he says, You want to slow down the rate of  
3 replication, and you want to add track so you can back away  
4 from the cliff. And those were sort of the two focuses of  
5 what doctors were looking for in medicines.

6 And by about the mid-1990s, we had the first wave of  
7 medicines come to market, and these were called antiretroviral  
8 medicines, and they worked okay for the first couple of years.

9 So one of the things you're going to hear about is how  
10 HIV spreads and how HIV can sort of outsmart medicines  
11 sometimes. So what happened in the 1990s, we had these  
12 first-generation medicines, and they were effective for a  
13 short period of time. They came in, and they were able to  
14 block certain mutations and certain variations of HIV.

15 But the problem was the disease was smarter than us.  
16 The virus was smarter than these first-generation medicines,  
17 and so pretty quickly, the virus just mutated. It just  
18 changed, and it formed in a way that these first-generation  
19 medicines didn't work anymore.

20 And the problem with something like that when you have  
21 a very -- a disease that transmits quickly through the  
22 population is that very quickly we started to have strains of  
23 HIV in the population that we had no medicines that would  
24 respond to.

25 We had a public health crisis once these

1 first-generation medicines stopped being effective against the  
2 virus -- against mutations of the virus. And that's where  
3 these medicines that we're here today about, Prezista and  
4 Intelence, come into play.

5         So they are second-generation medicines, and they were  
6 developed by two scientists at the time that were in Belgium,  
7 Dr. Janssen and Dr. Stoffels. Dr. Stoffels had actually spent  
8 a fair amount of time in Africa learning about HIV and  
9 researching HIV.

10         And they had a research center in Belgium, and they  
11 were studying and developing new and better HIV medicines that  
12 would have what are called high barriers to resistance. So  
13 what that means is while these first-generation medicines were  
14 only effective against the green and the yellow and they were  
15 unable to help us with the purple, the second-generation  
16 medicines, like ours, like Prezista and Intelence, they had  
17 high barriers to resistance.

18         They worked against more strains of the virus, and that  
19 was critically important, particularly at this time because it  
20 prevented a spread in the population of a variant of the  
21 disease that we couldn't control.

22         And what you're going to hear is that's why the FDA  
23 granted both of these medicines early approval. That's why in  
24 2006 the FDA approved Prezista, and very shortly thereafter,  
25 in 2008, the FDA approved Intelence, because these

1 second-generation medicines truly were a safety net for people  
2 who had failed on the first-generation medicines.

3 Because before these medicines came to market, if your  
4 virus was no longer responding to the first-generation  
5 medicines, doctors had no option. There was nothing we could  
6 give patients who had a virus that didn't respond.

7 So these medicines, and nobody's going to dispute it --  
8 these medicines were critically important, particularly at the  
9 time that they were developed. And everybody who comes in  
10 here -- even Ms. Penelow and Ms. Brancaccio, who are suing us,  
11 everybody is going to agree that these were lifesaving  
12 medicines.

13 And I thought I heard in counsel's opening Ms. Penelow  
14 and Ms. Brancaccio described to you all as former employees of  
15 Janssen, but what you're going to hear and what the evidence  
16 is going to show is that Ms. Brancaccio is actually still our  
17 employee today.

18 Today and for the entire time period in this case and  
19 before, Ms. Brancaccio had worked for us as a sales  
20 representative.

21 What the evidence is going to show is that our  
22 Government mandates access to Prezista and Intelence and all  
23 antiretroviral medicines because they are critical to help HIV  
24 patients stay alive.

25 You're going to hear and you're not going to be

1 surprised to learn that we have a national strategy to provide  
2 easy, unfettered access to HIV medicines. We have task force  
3 and agencies in our country that are devoted to coming up with  
4 a plan for how we can best offer patients medicines that will  
5 save their lives.

6 And when it comes to HIV, the directive from our  
7 Government is that medicines be accessible to people who need  
8 them. And you see here down at the bottom, the national  
9 strategy directs the federal Government and the state  
10 Government to ensure access to appropriate HIV treatment by  
11 promoting unimpeded or unblocked coverage to all HIV medicines  
12 that are listed in the HIV treatment guidelines.

13 So the HIV treatment guidelines are something that  
14 you'll hear a lot about in this case. They are put together  
15 by a panel of experts every year. There's about 30 experts  
16 from around the country that put together these guidelines.

17 And they include leading top-flight HIV doctors, and  
18 they also include doctors from the Government, from the FDA,  
19 from the CDC, and they put together recommendations for how  
20 doctors who are facing this disease should treat their  
21 patients.

22 And what the Government says is we should look to these  
23 guidelines when we think about what medicines we want to  
24 reimburse.

25 You're going to hear that Intelence and Prezista, our

1 medicines, have been recommended by our Government in these  
2 guidelines every single year since they have been approved by  
3 the FDA. Even today, the medicines remain recommended in the  
4 guidelines. You're going to hear not only are they  
5 recommended, but Prezista has actually been one of two  
6 preferred medicines in its class since 2008.

7 So I want to talk to you a little bit, particularly in  
8 light of what we just heard, about what this case is actually  
9 about.

10 So the agency of the Government that sets those  
11 guidelines is called the Department of Health and Human  
12 Services. And under the Department of Health and Human  
13 Services are a number of different Government agencies. So  
14 you all may have heard of the CDC, the Centers for Disease  
15 Control. That's an agency under HHS, or the Department of  
16 Health and Human Services.

17 NIH, the National Institutes of Health, they're also  
18 under HHS, but the two agencies we're going to talk the most  
19 about in this case are the FDA and CMS.

20 The FDA, as we heard a lot about this morning, is in  
21 charge of approving medicines to be sold, and when they  
22 approve medicines, they also approve what you know to be like  
23 the product label, the piece of paper that comes with the  
24 medicine or is attached to medicine that you buy at a  
25 pharmacy. That's what the FDA does.

1 And the FDA also has the power to make sure that  
2 companies like Janssen are promoting or advertising or  
3 marketing medicines in accordance with those labels.

4 Nobody is going to question in this case that we are  
5 under an obligation to promote our medicines in accordance  
6 with the product label, 100 percent. And if we don't do that,  
7 the FDA has powers to send us letters, to team up with the  
8 Department of Justice and investigate us or initiate  
9 enforcement actions against us.

10 And none of that is a part of this case. We heard a  
11 lot about marketing and promoting and the FDA and what's in  
12 the label. That's not what this case is about.

13 This case is about the other side of this slide,  
14 reimbursement. This case is about the Government paying for  
15 these medicines, and the claims in this case are that the  
16 Government shouldn't have paid for these medicines, and if  
17 they had only known about the allegations that are being made  
18 in this lawsuit, they wouldn't have paid.

19 Those are the claims in the case.

20 What the evidence is going to show is that what's  
21 important to the Government is not what's in the product  
22 label, is not what the actual package insert looks like.

23 What's important to the Government when it comes to HIV  
24 medicines is that HIV medicines are being prescribed for HIV  
25 patients in a medically appropriate way, and we'll talk a

1 little bit about how doctors have the ability to determine  
2 what way that is.

3 One of the plans that's at issue in this lawsuit is  
4 Medicare. That is a Government program that pays for people's  
5 medicines, and under that program, the Relators are seeking to  
6 have you award hundreds of millions of dollars.

7 They claim that the Government, Medicare, shouldn't  
8 have paid for these medicines. So let me tell you a little  
9 bit what the evidence is going to show about what HIV  
10 medicines the Government expects to pay for.

11 The way the Government administers its Medicare program  
12 is that it contracts with insurance companies, and those folks  
13 are called Plan D sponsors. They're just like regular  
14 insurance companies like you guys know: Blue Cross, Aetna,  
15 companies like that.

16 And they contract with these sponsors to decide and to  
17 administer the Medicare program and to submit claims to the  
18 Government to be reimbursed.

19 And so this is sort of maybe an easier way to think  
20 about how this process works. A doctor writes a prescription  
21 for Prezista, the patient takes the Prezista prescription to  
22 the pharmacy and fills it and then the pharmacy sends that  
23 prescription to one of these Plan D sponsors, like an Aetna, a  
24 Blue Cross, a Blue Shield.

25 And they determine what portion of that should be



1 submitted to the Government to be paid or if it's not  
2 appropriate to submit to the Government. That's their job,  
3 the Plan D sponsors.

4 And you're going to hear that Medicare or the  
5 Government, they set certain guidelines for what they want to  
6 pay for and how they want to do it. And remember, the  
7 Government is carrying out the national policy of making these  
8 medicines available to everybody who needs them. There is a  
9 national strategy that everybody have easy access to these  
10 medicines.

11 And so the very first thing you're going to hear about  
12 when it comes to what medicines the Government wants to pay  
13 for, you're going to hear that the Government has put our  
14 medicines in a protected class.

15 In fact, the Government has put every antiretroviral  
16 medicine in something called a protected class. They only do  
17 that for six types of medicines. There are six types of  
18 medicines that they think are so important to get to  
19 vulnerable populations who need them right away that they want  
20 to make sure that these plans are being run in a way that  
21 makes them accessible.

22 And so the first thing when it comes to whether or not  
23 the Government would have paid for these medicines -- the  
24 first piece of evidence you're going to consider is that these  
25 are in a protected class. All of these medicines need to be

1 made available.

2 The next thing you're going to see is information from  
3 CMS that says they want the Plan D sponsors to accommodate  
4 those national guidelines. Remember those national guidelines  
5 that had Prezista and Intelence and how they're one of the  
6 preferred medicines?

7 CMS says, when it comes to paying for these medicines,  
8 we want these plans to know and accommodate the national  
9 guidelines and offer complete treatment options for a variety  
10 of medical conditions, and that's HIV.

11 We are one of the diseases that the Government puts in  
12 a special class when it comes to making medicines available.

13 One of the things you're going to hear about is that if  
14 the Government wants to second-guess doctors when it comes to  
15 what they're going to reimburse, there's a lot of ways they  
16 can do it.

17 There's something called utilization tools that the  
18 Government can have their plan sponsors put in place to  
19 double-check that doctors are writing prescriptions in a way  
20 that CMS wants to pay for them. And let me tell you a little  
21 bit what I mean by that.

22 For example, the Government can institute something  
23 called a prior authorization. So the Government can say to  
24 the sponsors, Before we're going to pay for this antibiotic,  
25 you need to make sure that you have a prior authorization from

1 the doctor. The Government can do that if it wants to  
2 double-check that the type of antibiotic that's being written  
3 is one that the Government wants to pay for.

4 The Government can also say, I want to see some of this  
5 patient information. Before I reimburse this claim, I want to  
6 make sure that this is the right medicine for the right  
7 patient, so let me put this utilization tool in place.

8 The Government can also institute something called step  
9 therapy. They can say, Before we pay for antibiotic number 3,  
10 we want you to give us evidence that this patient has failed  
11 on antibiotic number 1 and antibiotic number 2. They can do  
12 that if they want to make it a little bit harder to get  
13 certain medicines approved for reimbursement.

14 And finally, another utilization tool the Government  
15 can use is to put limits on the quantity of the medicines it's  
16 going to pay for. So if the Government only wants a medicine  
17 to be prescribed twice a day instead of once a day, it can set  
18 a quantity limit that requires those prescriptions to be  
19 filled in a way that comports with how the Government wants to  
20 pay for it.

21 But what you're going to hear about in this lawsuit is  
22 that the Government has made clear that none of these tools  
23 can be used when it comes to HIV. None of these utilization  
24 tools or efforts to kind of second-guess doctors can be used  
25 when it comes to reimbursing HIV medicines. And that's

1 because HIV medicines are for a vulnerable population that CMS  
2 has put in a protected class.

3 You'll see this correspondence actually with our folks  
4 at J&J and the Government where the Government makes clear  
5 right down there at the bottom, No utilization management tool  
6 can be applied to any antiretroviral medicine.

7 And so there are no blockades when it comes to CMS  
8 reimbursing for these medicines because CMS is carrying out a  
9 national policy to make these medicines available to people  
10 who need them.

11 The evidence is going to show that the Government has  
12 made an intentional decision not to interfere with HIV  
13 treatment by HIV doctors. You're going to get to see some of  
14 the Government documents that talk about that.

15 This is something called a compendium, and it's a  
16 resource that the Government points Plan D sponsors to when  
17 trying to determine what medicines to pay for. And you see it  
18 talks about the fact that treating HIV is not a  
19 one-size-fits-all situation where you can just say, We pay for  
20 medicine 1 and not 2, 3 or 4.

21 The Government says, This is an individualized decision  
22 that needs to be made by doctors. The Government defers to  
23 doctors when it comes to HIV treatment. The HIV guidelines  
24 make clear that HIV is such a complex disease that it needs to  
25 be treated by specialists, and you'll see this part of the

1 guideline.

2 And you're going to hear from the experts about the  
3 multiple types of HIV medicines that need to be prescribed in  
4 combination in order to be able to properly and effectively  
5 treat this virus.

6 There are essentially three different classes, and  
7 doctors need to decide how to mix and match those classes of  
8 medicines to properly suppress the virus.

9 What you'll hear about is in deciding what medicines  
10 are appropriate, doctors can't just do that when a patient  
11 comes into the office for the first time.

12 When a patient comes into the office, what you're going  
13 to hear is that the first thing the doctor has to do is take  
14 blood so that they can run a number of different tests and  
15 determine which combination of medicines is going to  
16 effectively suppress the virus and help the patient live.

17 And one of the things -- one of the tests that's  
18 important when it comes to prescribing a particular medicine  
19 is a drug resistance test. The physician has to know what  
20 variant of the virus the patient has and whether or not it's  
21 resistant to certain medicines, because if your virus is  
22 resistant to Prezista, that doctor can't prescribe you  
23 Prezista. He has to choose another medicine in the class.

24 And so you're going to hear it's a complex decision  
25 that the Government wants to be made by highly specialized

1 doctors. And you're going to hear in the treatment  
2 guidelines, in the HIV guidelines itself, the Government talks  
3 about how sometimes the very best recommendation for treatment  
4 is not going to be that that's approved by the FDA.

5 Counsel talked to you a little bit this morning about  
6 something called off-label prescribing. A lot of times a  
7 doctor, in his or her medical judgment, decides that a  
8 medicine is right for a patient even though it's not in the  
9 FDA label.

10 And we see a lot with medicines for kids. A lot of  
11 time medicines, even like morphine, isn't approved for kids.  
12 But if you have a kid who gets in a really serious accident or  
13 has an operation or needs pain relief, doctors will sometimes  
14 prescribe the appropriate dose of morphine for a kid off-label  
15 because it's an appropriate way, in their judgment, to provide  
16 pain relief for someone who needs it.

17 Sometimes doctors prescribe baby aspirin to prevent a  
18 heart attack as people get a little older, late 40s, early  
19 50s. That's not on-label for baby aspirin, but it's something  
20 that doctors, in their medical judgment, sometimes think is  
21 appropriate.

22 And nobody in this case is going to take issue with the  
23 right of a doctor to do that in his or her medical judgment.  
24 We cannot promote to that doctor off the label, but the  
25 Government does not want to interfere with a doctor's ability

1 to write prescriptions off-label and have those prescriptions  
2 reimbursed by the Government, and they make that clear.

3 You're going to get to see the Government's  
4 reimbursement documents that talk about the value of off-label  
5 prescribing, how off-label use is critically important,  
6 particularly in diseases like HIV.

7 And you're going to see the Government's own documents  
8 that, when it comes to reimbursement, CMS doesn't care if it's  
9 on-label or off-label. CMS cares if it's medically  
10 appropriate for that patient.

11 Was it an HIV medicine that was prescribed for an HIV  
12 patient to treat that HIV? If yes, the Government pays. And  
13 we went through quite a lot this morning about all of these  
14 different types of ways that our medicines can be prescribed  
15 and that the Relators in this case take issue with.

16 And all of these different prescribing indications have  
17 published data that support their use.

18 Let's just take this treatment-naive category for a  
19 second. So they're claiming in this lawsuit the Government  
20 never should have paid for prescriptions that were written for  
21 the treatment-naive population.

22 And one sort of factual thing I did want to correct, I  
23 thought I heard counsel say that, you know, we had to promote  
24 off-label because treatment-naive was the big group of -- big  
25 population that we wanted to market to.

1           The facts in the case are going to show quite the  
2 opposite. The treatment-experienced group is the large group  
3 of patients. Treatment-naive is much smaller.

4           But there are some doctors who in their judgment  
5 thought treatment-naive was an appropriate patient to give  
6 this Prezista to. And you know what you're going to hear? So  
7 did the FDA.

8           Because after -- less than two years after Prezista was  
9 approved, in 2006, it was approved for treatment-naive, and  
10 during that two-year period of time where they're claiming  
11 hundreds of millions of dollars in damages, during that period  
12 of time, data was being published that supported the use of  
13 this medicine in the treatment-naive patients.

14           And so you're going to hear for all of these different  
15 ways in which doctors could prescribe this HIV medicine, there  
16 was scientific data that doctors could use to make their  
17 medical judgment about whether it was appropriate, and that's  
18 what the Government cares about when they reimburse.

19           Was it an appropriate HIV medicine for the appropriate  
20 HIV patient?

21           And some of the best evidence you're going to get on  
22 this? Hundreds of thousands of prescriptions were written by  
23 doctors for these complained-about uses who never had anything  
24 to do with Janssen. They weren't visited by a sales rep.  
25 They didn't come to a speaker event. They never talked to us



1 ever. And they, in their medical judgment, wrote these HIV  
2 prescriptions for the ways that the Relators are complaining  
3 about in this case. And those prescriptions were reimbursed  
4 by CMS, because CMS only cares that it's the right patient and  
5 the right disease. Everything else, CMS intentionally leaves  
6 to the good medical judgment of the physician.

7 CMS has continuously, the evidence will show,  
8 reimbursed claims for Prezista and Intelence from the time  
9 they first came to the market until today. Today, early May  
10 2024, CMS is reimbursing for these medicines right now. And  
11 the evidence is going to show our Government is well aware of  
12 the allegations that are being made in this case. And they  
13 don't make a difference.

14 And CMS has continued to reimburse, despite hearing the  
15 allegations that are being made here. You're actually going  
16 to see a detailed memo, like a 20-page memo, that the  
17 Relators' lawyers sent to the Government. You're going to get  
18 to see it, and it lays out everything in this case, all of the  
19 theories of the case, everything you heard about this morning,  
20 their sort of best pitch for why CMS shouldn't be paying for  
21 these medicines.

22 And what the evidence is going to show is that memo got  
23 sent more than six years ago. And every single day since  
24 then, CMS has continued to pay for these medicines. And  
25 despite the fact that there are nearly 7,000 employees at CMS,

1 not one of them, not one of them is going to come into this  
2 courtroom and tell you that they've been defrauded. No one is  
3 going to come in here from the Government and say that they  
4 agreed with the claims that are being made in a lawsuit for a  
5 lot of money. And that is going to be enormously telling  
6 about the strength of the evidence in this case.

7           What's more, you're going to hear about these sort of  
8 tack-on claims, hundreds of millions of dollars that have just  
9 sort of been added to the lawsuit, but you're not going to get  
10 any evidence about why.

11           There are claims being made for 26, not 50, states --  
12 you won't hear why -- claiming that these Medicaid programs  
13 shouldn't have reimbursed these medicines. Nobody from any of  
14 these 26 states is going to come in here and tell you they  
15 were defrauded. Nobody from these 26 states is going to come  
16 in here and tell you they didn't intend to pay for lifesaving  
17 HIV medicine.

18           But wait until you hear how much money they're going to  
19 ask you for from the 26 states, with no witnesses and no  
20 evidence. It's going to tell you what's really going on in  
21 this lawsuit for a whole lot of money.

22           I want to talk a little bit about our promotion and the  
23 work we did to promote medicines that we believe are good  
24 medicines and help save people's lives.

25           You're going to get to see extensive policies that

1 Janssen has that prohibit all of the conduct that counsel just  
2 complained about. We have policies about how to interact with  
3 doctors, how to interact with the Government, how to run a  
4 speaker program, how to promote medicines. You are going to  
5 get to see all of those policies. And you're going to see  
6 that these were not just policies on paper. We made sure that  
7 sales reps like Ms. Brancaccio and Ms. Penelow understood  
8 these policies and were monitored to make sure that they were  
9 carrying them out.

10 This is the sales rep pledge of ethics, and these are  
11 signed by Ms. Penelow and Ms. Brancaccio. The first day they  
12 came to work for us, they pledged they would not do the very  
13 things that they're alleging they did for years in this  
14 lawsuit.

15 You're going to see -- and this is sort of interesting.  
16 Counsel showed you one page of this 50-page compliance  
17 training program. Remember that slide he had about careful  
18 communication? You'll get to see the whole document, and  
19 you'll see what the document is is not a message to employees  
20 to make sure they cover their tracks. It's a robust training  
21 presentation about all of the company's compliance programs  
22 and the way in which the company expects its employees to  
23 comply with them.

24 And you're going to hear that in addition to having  
25 policies and pledges and training programs, we have programs

1 that sort of made it interactive. We made sure that employees  
2 were asking questions when they had compliance issues.

3 And you're going to get to hear from the  
4 Catherine Kaucher, our compliance officer in this case, and  
5 she's going to talk to you about this program that she  
6 started. It's called the HCC -- Health Care Compliance -- Red  
7 Bag program.

8 So Catherine Kaucher, she does a lot of training on  
9 compliance. She speaks at a lot of these sales force meetings  
10 and conferences. And one time she was at a sales meeting and  
11 she said, I think that maybe some of these sales reps are a  
12 little hesitant to ask questions in a big room of a lot of  
13 people. So what I'm going to do, she says, is run across the  
14 street to CVS, and I'm going to get, you know, one of those  
15 gift bags that you use for, like, your kids' parties, and she  
16 puts it in the back of the room.

17 And she says, We're going to be here all week. And so  
18 if anybody in this room of more than a hundred sales reps has  
19 a question, write it down. Put it in the red bag, and then  
20 I'll send an email around to the entire sales force answering  
21 all of your compliance questions.

22 And Ms. Brancaccio and Ms. Penelow, they were at a  
23 number of these sales meetings where the red bag was right in  
24 the back. And the evidence is going to show they never raised  
25 a question. They never raised a concern. They never dropped

1 in the bag their concern that they were being directed to  
2 promote off-label.

3 But other people had questions. Other people asked  
4 about some of the things you heard about this morning, like  
5 this sales rep who said, Can we get more scientific literature  
6 so the sales reps can be more educated? And you know what  
7 Catherine Kaucher says? Well, maybe we can get it to you for  
8 internal or educational use, but it can't be discussed unless  
9 it's an approved message.

10 And so had these -- had these events truly happened,  
11 the evidence is going to show there were many, many ways that  
12 these sales reps could have reported these questions without  
13 anyone knowing who they were. And this red bag program is one  
14 of the best examples of that.

15 Every single piece that was used with a physician,  
16 you're going to hear, went to the FDA for approval. So when  
17 sales reps go into offices of doctors to give them information  
18 about our medicines or talk about things that are in the  
19 labels, when it came to two medicines, all of those materials  
20 were approved by the FDA. We have a whole department of  
21 regulatory affairs that puts together those pieces, sends them  
22 to the FDA for approval, and they don't get used until we hear  
23 back from the FDA. And you're going to get to hear and see  
24 some of those messages.

25 There are a number of approved messages that dealt with

1 lipids. And you heard a lot about lipids this morning. There  
2 was scientific data in our label about how our medicine,  
3 Prezista, affected people's lipids and how, in fact, it had a  
4 better effect on lipids than some of the other medicines in  
5 the class like Kaletra.

6 And so this is a piece, promotional piece that went to  
7 the FDA, was approved by the FDA for use with doctors. And it  
8 talks about a proven lipid profile based on scientific data.

9 You're going to hear about a number of different lipid  
10 messages that were approved by the FDA during this time. Low  
11 impact on lipids. That was an approved message.

12 Nobody disputes that our sales reps, as blessed by the  
13 FDA, could go into doctors' offices and talk about Prezista  
14 having a low impact on lipids.

15 Nobody disputes, approved by the FDA, that they could  
16 talk about a minimal impact on lipids based on the data.

17 Nobody disputes, as we just looked at, they could talk  
18 about a proven impact on lipids.

19 What this case is about, what hundreds of millions of  
20 dollars are going to be asked of all of you for, is this:  
21 friendly. Okay to say low impact. Okay to say minimal  
22 impact. Okay to say proven lipid profile.

23 But the Relators in this case claim that if you said,  
24 "lipid friendly," that was a fraud on the Government to the  
25 tune of \$430 million. The evidence is going to show that

1 friendly is not fraud, that the statements that were made  
2 about the data and the label and how lipids were affected by  
3 Prezista were appropriate and were consistent with all of the  
4 approved messages that we just looked at.

5           Finally, I want to talk to you about the speaker  
6 claims. The allegations are that we bribed doctors, that we  
7 bribed some of the most experienced HIV doctors in this  
8 country. We paid them to prescribe. That's what the claims  
9 are. And that's a violation of the Anti-Kickback Statute, and  
10 we know it. And you're going to see our policy.

11           We are well aware of the Anti-Kickback Statute. You  
12 cannot pay a doctor to prescribe medicine. And you are going  
13 to see compliance document and training document after  
14 training document that shows that's not what we intended to  
15 do.

16           And here's the part. Speaker programs -- and I had a  
17 slide before this -- our speaker programs came in sort of  
18 three categories. We had some programs where doctors did  
19 presentations to other doctors, to fellow doctors. That was  
20 about specific medicines.

21           We had some presentations where doctors just talked  
22 about HIV. They just talked about the disease state or issues  
23 with the disease. They didn't even mention a product.

24           And then we had other programs where doctors spoke to  
25 patients, where community groups wanted doctors to come in and

1 educate them.

2           These were the three different types of programs that  
3 we ran. And there's no question that speaker programs, in  
4 addition to being meant to educate physicians or community  
5 members, are meant to promote our medicines. It's a  
6 promotional activity that is highly regulated.

7           But here's the key. As you sift through the evidence,  
8 keep this in mind. We can pay and compensate doctors for  
9 promoting, for talking about our medicine to other doctors.  
10 That is -- there is nothing wrong with that. It is not a  
11 violation of the Anti-Kickback Statute. We absolutely can do  
12 it, and we did it appropriately.

13           What we can't do and what we did not do is pay speakers  
14 so that the speakers prescribed more. And what happened today  
15 in this opening is what I'm afraid is going to go on during  
16 the trial. It's going to be an effort to sort of mix those  
17 two things up and trick you into thinking that we were paying  
18 for speakers to prescribe.

19           So this document went up on the screen. It was, like,  
20 a little cut and pasted. Do you remember the document that  
21 said, We change prescribing behavior? Counsel was suggesting  
22 to you that we were paying speakers to prescribe more or to  
23 change their prescribing behavior. That's not what this  
24 document talks about at all. And we're going to get it to you  
25 during the course of the trial so you can look at it.



1           What this document talks about is trying to get doctors  
2 in the audience to be more educated about our products so they  
3 will prescribe it. And that is the goal of a speaker program,  
4 and nobody disputes there is nothing wrong with that.

5           You're going to see our policies about how speakers  
6 were selected. They were not selected based on how many  
7 prescriptions they wrote. They were selected based on a  
8 number of different criteria, including experience with the  
9 medicine, reputation, ability to speak in front of a crowd.

10           You are going to hear about -- a lot of allegations in  
11 this case are going to come to you from these sales reps and  
12 from their friends who are going to testify this week, and the  
13 evidence is going to show sales reps have nothing to do with  
14 selecting speakers. They can make a recommendation. They can  
15 end an email and say, Oh, I think this doctor would be a good  
16 choice. But there is a robust multidisciplinary process for a  
17 speaker to be selected, and it intentionally doesn't include  
18 sales reps.

19           So another thing to be thinking about as the evidence  
20 comes to you in the case is how is this evidence coming from  
21 sales reps who weren't even involved in this process? The  
22 speaker bureau team makes a recommendation to the safety  
23 committee that involves the health care compliance team and  
24 the medical affairs team, and that's how a speaker is  
25 selected. It's not selected by a sales rep who's hoping to

1 get a doctor to prescribe more medicine.

2           These are some of the folks who were on our speaker  
3 board. They are leading HIV experts. Dr. Gottlieb was the  
4 first to identify AIDS. He was on our speaker bureau for a  
5 period of time. And you might get to hear from some of these  
6 folks. It was their experience and representation, not the  
7 amount of prescriptions they wrote, that put them on the  
8 speaker board.

9           We're going to show you some of the data so you can see  
10 for yourself that the allegations that are being made here are  
11 not true. This is Dr. Race. She was on the speaker bureau.  
12 And this -- she was on our speaker bureau for this entire time  
13 period. She is nationally recognized, and I hope you get to  
14 hear about some of her experience in this trial. But these  
15 are her prescriptions. And you can see, down here, there's a  
16 period of about three years where she almost didn't prescribe  
17 any of our medicines.

18           The allegations are that we're bribing speakers to  
19 prescribe more medicines, and one of the biggest key speakers  
20 on our speakers bureau didn't prescribe any medicines for,  
21 like, three years, because -- she wasn't on there because of  
22 prescriptions. She was on there because of her reputation and  
23 because of her ability to connect with our colleagues.

24           Speakers signed contracts that said they would remain  
25 on-label. They would not solicit off-label questions. They

1 would comply with the law. Speakers went through compliance  
2 training before they gave their speeches. They were  
3 compensated at fair market value for their time.

4           You're going to get to hear from some of the speakers  
5 in our program in this trial. And what you're going to hear  
6 is that they actually lost money speaking for us because they  
7 could make more money in their practice than doing these  
8 speaker events for us.

9           You're going to hear from some doctors who are going to  
10 tell you, By the time I prepared for the speech two or three  
11 hours, by the time I drove or traveled to where the speech  
12 was, another one to two hours, by the time I gave the speech  
13 and waited for questions and traveled back home, I had spent  
14 way more time than the money that I was paid. But they did it  
15 because it was important to them, because talking to their  
16 fellow doctors about a disease that they are passionate about,  
17 about medicines that they believe in were important to these  
18 speakers.

19           These speakers signed and promised that they were not  
20 being bribed. That's the claim in the case. We bribed these  
21 folks. They signed contracts that said, I'm not being bribed.  
22 This is Elizabeth Race, who signed this contract that has a  
23 whole section that says, This is not a kickback. But these  
24 are the allegations in the case.

25           Counsel said we had a program three times a day, 9,000

1 programs for, like, ten years. That's nationwide. Three  
2 programs a day from California to New Jersey is like one per  
3 time zone during that time period. And you're going to hear  
4 there were a lot of changes in the science and in the labels  
5 and in the guidelines that required these speaking events to  
6 get this information out to audiences that we believed and  
7 doctors believed wanted and needed this information.

8           The kickback claims in this case, this Anti-Kickback  
9 Statute claim, you're going to hear and you're going to see it  
10 didn't start with Ms. Brancaccio and Ms. Penelow. You're  
11 going to get to see an email from the lawyers to  
12 Ms. Brancaccio and Ms. Penelow, right on the eve of suing us,  
13 where they sort of have a second thought, where they kind of  
14 come up with an extra idea of how to put a claim for more  
15 money in the lawsuit. And the email says, Let's add a  
16 kickback claim. Years of putting together a complaint to sue  
17 us, getting all the evidence ready, and all of a sudden, on  
18 the eve of filing a lawsuit, it is the lawyers, not the  
19 Relators, who say, Let's add this kickback claim, another half  
20 a million -- another half a billion dollars.

21           This lawsuit is not about helping the Government, and  
22 that's what the evidence in this case is going to show. You  
23 will see the policies that require these Relators to disclose  
24 and report any suspected compliance problems that were going  
25 on during the time period that they were there. You are going

1 to hear about the numerous ways that Relators could have  
2 reported these issues on an anonymous basis. We have a 1-800  
3 anonymous hotline that operates 24 hours a day, 7 days a week.  
4 You're going to see the training that was given to these  
5 Relators where they could have called that at any time.

6 You're going to hear about compliance programs like the  
7 red bag program, the hotline, the J&J compliance act, all of  
8 the different ways that these Relators could have reported  
9 these issues but didn't.

10 If this really happened, why didn't they report it?  
11 Why did they wait for years? And a lawsuit in which they have  
12 a ginormous financial interest to raise these issues.

13 The evidence is going to tell you the truth on that.

14 They have alleged a nationwide conspiracy that went on  
15 for a decade and involved some of the most top-flight doctors  
16 who, you are going to hear -- if this really happened, these  
17 doctors had an FDA obligation to report it.

18 In 2010, the FDA came out with guidance that you're  
19 going to hear about that would have required every doctor that  
20 they claim they were pushing all this off-label info to to  
21 report what was happening. And there is not going to be any  
22 evidence in this case that a doctor ever reported what they  
23 claim went on across the country for more than ten years.

24 One of the things that is sort of the most -- one of  
25 the most important things that you guys have on your plate in

1 your role as jurors is to judge the credibility of the  
2 witnesses that come on this stand and allegations that are  
3 being made in this case. And the judge read to you a little  
4 instruction about that at the start of today. But I want to  
5 suggest to you, as these witnesses testify this week, to be on  
6 the lookout for this. If what they say happened, really  
7 happened, then it should be true in the courtroom and outside  
8 the courtroom. The truth doesn't change. The truth always  
9 stays the same. If it happened, it happened. If it didn't,  
10 it didn't.

11 But you are going to hear that the allegations made in  
12 this courtroom do not measure up with what the documents from  
13 the actual time period look like. And so be on the lookout  
14 for changes in stories, for changes in key facts that should  
15 stay the same if this really happened. Be on the lookout for  
16 allegations that come to you in the context of a lawsuit for a  
17 lot of money that are in direct conflict with what those folks  
18 said back in 2006, 2008, and 2010.

19 The evidence is going to show that the Relators knew it  
20 was a problem for them, that they didn't have any documents  
21 that supported the claims they're making in this lawsuit. So  
22 they set out to secretly tape their co-workers. And they knew  
23 that Johnson & Johnson has a policy that prohibits that. Some  
24 states prohibit it, too, and for some of these recordings, we  
25 don't know where they took place. But we at Johnson &

1 Johnson, we have a policy that prevents our employees from  
2 secretly taping our employees.

3 And this is an email from Ms. Brancaccio to herself.  
4 So it's coming from her J&J email account to her Gmail  
5 account. And you're going to get to see Ms. Brancaccio, as  
6 she started to take our documents and get them to her lawyers,  
7 she sent about 650 emails from her work computer to her  
8 personal email account, and this was one of them.

9 She sent the taping policy that says clearly, As a J&J  
10 employee you're not allowed to secretly tape people. You're  
11 going to get to hear the secret tapes that these Relators made  
12 in connection with this lawsuit.

13 And you're going to get to hear some of the things they  
14 caught on tape, including our compliance officer, Catherine  
15 Kaucher. One of the secret recordings actually is of a  
16 compliance training where Catherine Kaucher, unbeknownst that  
17 she's being recorded, is telling everyone about the importance  
18 of ensuring that speakers remain on-label, about the  
19 importance of reporting any type of noncompliance.

20 She even gives, on the secret recording, the 1-800  
21 number so people can report 365 days a year any issues of  
22 noncompliance.

23 You're going to hear a doctor caught on a secret tape  
24 for purposes of a lawsuit. He has no idea that one of these  
25 Relators was secretly taping him. They secretly taped a sales

1 rep of ours detailing or talking to this doctor. What they  
2 caught on tape is the truth. And you're going to hear, if  
3 they play you the entire tape -- and if they don't, we will --  
4 you get to hear him talk about why doctors prescribe medicines  
5 and how they make prescribing decisions. And the reason they  
6 like the tape is because one of our sales reps is talking  
7 about lipids and she uses the term "relatively lipid  
8 friendly," which is entirely appropriate and consistent with  
9 the FDA messages. The only place the word "friendly" is bad  
10 is in these allegations.

11 But you're going to get to hear him talk about why and  
12 how he prescribes medicines, and it has nothing to do with  
13 sales reps. He talks about how he prescribes based on what  
14 his patients prefer. He says, Sometimes patients come to me  
15 and they have a preference for what medicine they want and I  
16 help them. I help them get the medicine they want. He says,  
17 most importantly, he prescribes on personal experience. And  
18 he talks about running laboratory tests, those resistance  
19 tests we were talking about, before he decides to prescribe  
20 medicine.

21 So even though they were out to kind of secretly get  
22 their co-workers on tape, to make up for the fact that the  
23 documents don't say what they alleged in this lawsuit, they  
24 actually caught on tape evidence of compliance, evidence of  
25 doctors doing the right thing in their medical judgment to get



1 the best medicines they can to their patients.

2           You're going to hear, I think, from most of these folks  
3 this week. These folks are all friends of each other or the  
4 Relators. They all worked together at Janssen for a period of  
5 time. And these are the fact witnesses that you saw on that  
6 map that counsel had this morning.

7           What you're going to hear is that all of their  
8 testimony was written out by the lawyers. The lawyers went  
9 out with a private investigator and tried to call up a bunch  
10 of former employees who might be kind of disgruntled with us,  
11 and they came upon all of these folks. And they typed up all  
12 of the things they wanted to say in the lawsuit, and these  
13 folks all signed them.

14           And then you're going to see Ms. Brancaccio, she sent  
15 an email and said, Please sign this. Please sign whatever the  
16 lawyers wrote because it would really help me in my  
17 billion-dollar lawsuit.

18           So listen carefully to the testimony of those folks as  
19 they come in here. Listen to what the lawyers wrote in those  
20 declarations and if it's supported by the documents that these  
21 witnesses actually wrote at the time period.

22           I want to just briefly before I end -- and, Your Honor,  
23 I know I have about five minutes left.

24           THE COURT: I don't want to rush you. I can always  
25 move that matter a little bit. I have that power.

1 MS. BROWN: I'm just about done.

2 I want to leave you all with a couple of things to give  
3 you a flavor of what is going on in this lawsuit. So they're  
4 going to ask you guys for almost a billion dollars, and here's  
5 kind of some of the claims they're going to tell you were  
6 fake, fraudulent, false claims.

7 They want to get money back for the Government and the  
8 Relators in this type of a situation. This is part of their  
9 damages model. So you have a doctor who in 2006 went to a  
10 speaker program. So one of our doctors was talking about  
11 Prezista back in 2006 when it was approved, and we have  
12 Dr. Smith who attends the program back in 2006.

13 In 2013, Dr. Smith prescribes a totally different  
14 medicine, Intelence. The allegations in this case are that  
15 was a false claim. That prescription of Intelence that took  
16 place over a decade later, they're going to try and convince  
17 you that was false, that doctor was influenced by what he  
18 heard at that speaker program back in 2006 and the Government  
19 never would have paid for Intelence in 2013. That's going to  
20 be the claim.

21 You're going to see claims like this one where a doctor  
22 in California -- somehow my state is missing. The doctor in  
23 California prescribes a medicine in 2006. Then the patient  
24 moves to New Jersey in 2013 and goes to a different doctor.  
25 They're going to claim when this different doctor also

1 prescribes Prezista, that's false. That different doctor was  
2 somehow influenced by the first doctor, who was visited by a  
3 sales rep, and, therefore, they want all that money back.  
4 False claim.

5 They're going to say every prescription that was  
6 written by a speaker -- so we hire these top-flight experts.  
7 They speak to their colleagues, and what the claims in this  
8 case are, every single prescription of our medicines that they  
9 write after that event for the end of time is fraudulent, is a  
10 false claim.

11 That's \$300 million for 483 false claims. That's the  
12 claim. And what that means is that these type-flight HIV  
13 specialists -- is that none of these people ever should have  
14 been able to treat HIV patients with our medicines after they  
15 spoke at one of our events. What that means is the  
16 allegations here is that these top-flight specialists are  
17 forever tainted and never could have prescribed after us.

18 What it means, what the claims in this case really mean  
19 is that they don't want the Government paying for decisions  
20 made by top-flight HIV specialists like this. They don't want  
21 those patients to be able to get these medicines reimbursed.  
22 Those patients, I presume, should just pay for these out of  
23 pocket. That's the reality about the claims that are being  
24 made in this case. The Relators and the Relators alone have  
25 the burden of proving to you all that what they've claimed in

1 this lawsuit is true. And I would submit to you all, after  
2 you sit here for five weeks, after you hear from the Relators,  
3 after you hear from their friends, after you hear from experts  
4 that are being paid by the lawyers, they are not going to come  
5 close to proving to you all that the very serious claims they  
6 have made in this lawsuit are supported by the evidence or  
7 supported by the facts.

8           They have accused hundreds of Janssen employees of  
9 misleading and bribing doctors for decades, and the evidence  
10 is not going to support that. Please be on the lookout for  
11 inconsistencies. Please judge the credibility of the people  
12 coming before you, and please wait for us to put on our case.

13           We don't have the burden of proof, so we go second.  
14 You're going to hear their whole case first, and then we'll  
15 get to stand up and put on some of our witnesses. So please  
16 keep an open mind, listen to the evidence, and we look forward  
17 to putting on this case and proving to you that the  
18 allegations in this lawsuit are not true.

19           Thank you very much for your time.

20           Thank you, Your Honor.

21           THE COURT: Thank you, Counsel.

22           Folks, it's about that time, so we're going to break  
23 for lunch for 45 minutes. Why don't we just say have  
24 everybody back at quarter after 1:00?

25           Does that work, Kim?

1           Let's do quarter after 1:00. You get a couple extra  
2 minutes there to walk. All right. So let's excuse the  
3 jurors. Counsel remain.

4           THE DEPUTY COURT CLERK: All rise.

5           (Jury exits courtroom.)

6           THE COURT: Folks, have a seat. Counsel, anything we  
7 need to chat about before lunch?

8           MR. MARKETOS: Briefly, Your Honor. I want to do  
9 this only because it's hot off the heels -- hot off the press.  
10 You just heard the opening statement from defense counsel. So  
11 that is why --

12          THE COURT: Wait. Hold on.

13          MR. MARKETOS: Oh, I'm sorry.

14          THE COURT: Just when that door opens, I worry about  
15 how -- where they are before their deliberations.

16          Okay. Go ahead, Counsel.

17          MR. MARKETOS: So are we able to pull our -- the two  
18 slides up that were objected to by -- the reason I want to  
19 address this, Your Honor, is because if we don't address it  
20 now after you just heard the opening from --

21          THE COURT: Counsel, you can sit. You'll have an  
22 opportunity to speak.

23          MR. MARKETOS: If we don't do it right now, it's  
24 going to become stale, and then we re-address it, you're going  
25 to forget or we're going to forget --

1 THE COURT: I won't forget. Let me hear it.

2 MR. MARKETOS: Yeah, you won't.

3 So the gist of it is this: We argued in the motions in  
4 limine when they tried to exclude that the magnitude of the  
5 settlements themselves -- this is at page -- this is our  
6 response to their motion in limine.

7 It was the scope, the extent and the magnitude were  
8 important because they are downplaying the severity of this  
9 misconduct.

10 And those numbers that were put on the screen, over  
11 \$81 million for prior off-label marketing, over \$2.2 billion  
12 for kickbacks and off-label marketing against Janssen and  
13 Johnson & Johnson is to show that the Government takes the  
14 matters very seriously, and they take that type of conduct --

15 THE COURT: Well, no, but these are all different  
16 cases, right? So what you're going to ask for now is what? A  
17 trial within a trial?

18 MR. MARKETOS: No --

19 THE COURT: Don't -- let me finish --

20 MR. MARKETOS: Okay.

21 THE COURT: -- then you can speak.

22 MR. MARKETOS: Yep.

23 THE COURT: When Janssen comes up, they're going to  
24 have to distinguish now all of these cases, right?

25 MR. MARKETOS: Sure.

1 THE COURT: They're going to say, Well, that dollar  
2 amount just doesn't have to do with off-label marketing. It  
3 was this type of drug, and this was the time period, and this  
4 was what was going on.

5 And so these are not the same cases. You're going  
6 to -- you're going to compel a trial within a trial, and, by  
7 the way, your only evidence of whether this is material to the  
8 Government or important for this jury is if you demonstrate a  
9 completely different matter than what the dollar amount was  
10 for that case.

11 You don't have any evidence to present to say why this  
12 particular -- these allegations are serious to the Government.

13 MR. MARKETOS: No, Your Honor, not at all. But it  
14 really matters because -- well, if we can turn to the next  
15 slide. Okay.

16 This is what is -- this is what is of concern to us.  
17 The number of elements that this evidence touches on, you saw  
18 counsel put that big compliance document up in front of the  
19 jury. She was holding on to it. This slide is from that  
20 document.

21 So I'm not trying to convince Your Honor of anything  
22 other than this is the information that they, Janssen, was  
23 providing to them, Janssen, to say, Don't do this. This is  
24 the type of conduct that could get you into trouble in this  
25 field at these amounts.

1           So they're telling themselves this is how serious the  
2 Government takes it. These are the sizes of the settlements.

3           THE COURT: But that's different. You're trying to  
4 show this to a jury, right?

5           MR. MARKETOS: Sure.

6           THE COURT: So you don't see how -- even if I were to  
7 agree with you, and I'm not even sure I'm there yet on stage 1  
8 of this. What's the probative value of this, other than  
9 saying, Hey, jury, look at this significant dollar amount?  
10 That's what this case is, right, which is completely improper.

11           But even if I were to agree with you there, the  
12 probative value of this, how is that not substantially  
13 outweighed by the prejudice to Janssen when you're basically  
14 telling this jury, This case is worth \$800 million?

15           By the way, you're making that argument anyway, right?  
16 You're demonstrating that, Here are the number of claims in  
17 this case. Forget about those cases in 2013 or 2010. You're  
18 telling the jury, Here's the number of claims, do the math.  
19 The math equals 400-and-some thousand dollars for this or it  
20 equals this couple hundred thousand dollars for this.

21           I mean, you're doing that. But how is this not -- how  
22 is the prejudicial value of showing these dollar amounts to  
23 this jury not -- how does that substantially outweigh any  
24 probative value if you can convince me there is any?

25           And showing it to a Janssen -- internally at Janssen is



1 not the same as you publishing it to the jury. Simply because  
2 a document was disclosed internally within the company,  
3 Defendant, doesn't necessarily mean it's admissible in the  
4 case.

5 MR. MARKETOS: Sure.

6 THE COURT: So I'm trying -- still trying to  
7 understand why you think these numbers should come in other  
8 than why I think you want them in. Because you want to show  
9 the jury, Hey, they've been in trouble with other matters, and  
10 in those cases, the Government -- you know, there was a  
11 settlement for this dollar amount or the Government was  
12 reimbursed these hundreds of millions of dollars.

13 And let's spoil this jury now by showing them those  
14 numbers. I could see why it's important for you, but I'm not  
15 so sure I'm clear on how it's admissible under any rule.

16 So walk me through it. I'm not going to cut you off,  
17 but if you're asking me to rule, then let me hear from  
18 Janssen, but is there anything more you want to put on the  
19 record other than why I think you want it before the jury?

20 MR. MARKETOS: Your Honor, I thought you'd already --  
21 we thought you'd already ruled on this.

22 THE COURT: I did. Look, I went back on the motion  
23 in limine, so I'm not saying that you can't address that --  
24 you were talking about scienter. You were talking about  
25 intent.

1 MR. MARKETOS: Scierter, materiality and --

2 THE COURT: And intent. And you're saying basically,  
3 Look, we want to be able to put some evidence that Janssen was  
4 aware of these issues, right?

5 MR. MARKETOS: Right.

6 THE COURT: That they had had trouble with these  
7 issues before. I've given you that. That doesn't necessarily  
8 mean -- and there's nothing in the motion in limine decision  
9 that I've reviewed, and I wrote it, that says you're going to  
10 be able to get before the jury 800-some million dollars for  
11 this because here's -- unless I'm mistaken, and I'm going to  
12 hear -- I don't know if it's Mr. Wyatt or Ms. Brown, I don't  
13 know who's going to speak for Janssen.

14 But if I were on that side, I'd say, Well, that's a  
15 whole different matter now. So why don't we just add five  
16 weeks to this trial, because I'm going to now have to  
17 demonstrate how this case is absolutely different than what  
18 that was.

19 And maybe I'll also have to say why we're at trial here  
20 versus why we didn't go to trial there or whatever the other  
21 issues are going to be, which drug it was, what was the time  
22 period, what were the other factors, was it rainy or sunny on  
23 the day that it happened.

24 There's going to be a million different things that  
25 they're going to have to distinguish with this jury to

1 convince them why they should not even be slightly moved by  
2 those dollar signs that you put before them.

3 How is that not confusing to the jury?

4 MR. MARKETOS: So I understand, Your Honor. I think  
5 you're addressing specifically the dollar amount only, right?

6 THE COURT: That's where I am now, and that's my  
7 understanding of -- well, let me hear from Janssen.

8 Before you finish, I'll let you continue, but I want to  
9 talk to Janssen for a moment. So one down, one up.

10 MR. MARKETOS: Okay. Sure.

11 MR. KLEIN: Thank you, Your Honor.

12 THE COURT: The only objection, and correct me if I'm  
13 wrong before I hear anything more from you, is you're not  
14 objecting to my ruling -- and by the way, if you did, I'm not  
15 reconsidering it, right?

16 I believe they have the right to bring in these other  
17 matters from 2010 and '13, but my understanding from Janssen,  
18 which I'm inclined to agree, is that your objection is they  
19 should not be able to put forth these dollar amounts before  
20 the jury because that's going to cause a trial within a trial.

21 And maybe there's a prejudicial issue, too, and maybe I  
22 said that on my own. I'm not even sure that's the argument.  
23 Why don't you walk me through what your position is before I  
24 go back to Mr. Marketos?

25 MR. KLEIN: So Your Honor is correct about the scope.

1 We're seeking exclusion of the dollar amounts for all the  
2 reasons the Court just said. It would be a trial within a  
3 trial. It absolutely is a different product, different  
4 circumstance, different allegations.

5 And we would have to put that in context if those came  
6 in, just to sort of distinguish it from the case. But also  
7 it's a settlement, Your Honor. It's not indicative of the  
8 actual value of the case. It's indicative of a settlement  
9 reached to resolve a dispute.

10 THE COURT: And there are a host of reasons why a  
11 matter might settle, none of which we know.

12 MR. KLEIN: And there are policy reasons not to  
13 jeopardize that. It would deter people from going to  
14 settlements in the future if they knew that, once they settle  
15 once, every single False Claims Act case that comes  
16 thereafter, they then need to litigate that case inside the  
17 case and so on and so on, however settlements there may be.

18 The last thing I'll say just to sort of add to what  
19 Your Honor said previously is I took the ruling on the slides  
20 to be sort of -- if we open the door, maybe there's more to  
21 this kind of thing.

22 But Ms. Brown's opening was very circumscribed about  
23 materiality. It was about these drugs. These are the  
24 policies that relate to these HIV drugs in this case.

25 And it's not -- it's not a blanket statement that the

1 Government just doesn't care about off-label marketing or  
2 doesn't care about other drugs or what other improper  
3 promotions may have been done in other cases.

4 So it's just not true that they need this to show that  
5 the Government cares about off-label marketing. That's not  
6 really been disputed. So I don't think anything has changed  
7 from the opening that makes this any more probative than it  
8 was when we started, which is not at all.

9 MR. MARKETOS: Your Honor, I can read the room, and I  
10 understand the Court's concern, as it's the whole concept of  
11 trying a case within a case.

12 When -- when counsel stands up there and says, quote,  
13 CMS doesn't care if it's on-label or off-label, it doesn't  
14 care and CMS only cares about the medication for the patient,  
15 it's important to us to let the jury know CMS cares because,  
16 when they catch you, you get in trouble. And Janssen knew  
17 that because they were telling their own people, Watch out.

18 THE COURT: But don't you have that by having --  
19 being able to address the settlements in the first place,  
20 which I granted for you? You have that ability --

21 MR. MARKETOS: Yes.

22 THE COURT: -- to contradict what the defense said if  
23 that's, in fact, contradictory of what you said in the  
24 opening, and you can put that before the jury.

25 My issue is very limited, and I think it's the issue

1 that I just clarified with Janssen, that this is about the  
2 dollar amount.

3 MR. MARKETOS: Okay.

4 THE COURT: So I will tell you that nothing -- here  
5 is where I'm leaving my ruling for now. Nothing that has  
6 occurred -- by the way, no evidence has even been presented.  
7 I mean, you all told me earlier this morning that, if this  
8 issue arose during the actual presentation of evidence, we may  
9 revisit it, right? We're revisiting it after opening  
10 statements.

11 MR. MARKETOS: Yes.

12 THE COURT: So I'm landing here. Nothing has  
13 occurred before me that is going to, at least at this  
14 juncture, allow me or allow Relators to present the evidence  
15 of those dollar amounts to this jury.

16 Now, if something occurs -- with one caveat, right?  
17 This is going to have a little asterisk next to my home run.

18 If something occurs during the trial where you think  
19 the issue should be revisited, I'm not going to prohibit the  
20 Relators' counsel from raising the issue at that time and  
21 saying, Well, now they've -- now they've caused a problem, and  
22 now we believe we should be able to raise this.

23 And I don't know in what context that would occur, but  
24 I'm going to allow you to revisit it if something happens  
25 during the trial that you think they actually have opened the

1 door.

2 But I don't think Ms. Brown opened the door during the  
3 opening statement, and I think a lot of what you're looking to  
4 do with this information I've given you.

5 The dollar amount, for me, I will tell you -- and I'm  
6 saying this without ruling on it yet, but right now, from what  
7 I've heard so far, the probative value is limited at best.

8 The prejudicial value is -- substantially outweighs  
9 that probative value when you look at putting that dollar  
10 amount before this jury.

11 And, look, I'm not -- I'm not being naive about this.  
12 I completely kit and caboodle before this jury, right? You  
13 want to tell them, Look, this has been done before, look at  
14 all the hundreds of millions of dollars.

15 So when Ms. Brown is saying in the opening statement  
16 this is about money and they're going to get this, you know,  
17 windfall over here, I want to kind of, you know, diminish that  
18 a little bit by saying, Ah, this has happened before, and  
19 other folks -- you know, we've got money, and this is what has  
20 happened in the past.

21 Right now I still think it's unbelievably prejudicial  
22 to the Defendant and the purpose in which you are attempting  
23 to elicit it or present it to the jury. I've already given  
24 you more than enough evidence, I think, to support those  
25 issues. So for now, it's out.

1 MR. MARKETOS: I understand.

2 THE COURT: If you all want to revisit it at some  
3 point because something occurs during the trial, I'm not going  
4 to prohibit that discussion, and we can have it outside of the  
5 earshot of the jury, but why don't we wait and see what that  
6 might be.

7 Does that make sense?

8 MR. MARKETOS: Yes, Your Honor.

9 THE COURT: All right. What else?

10 MR. MARKETOS: That's it. I just wanted to touch on  
11 it only because it had just happened, and that was --

12 THE COURT: No, no, that's fine. Nothing has changed  
13 for me. I'm not knocking you for raising it now.

14 MR. MARKETOS: Sure.

15 THE COURT: What I'm saying is if something else  
16 occurs during the trial with the actual presentation of  
17 evidence that you all think we should be revisiting this  
18 issue, I'll entertain it at that time.

19 But where we are right now, I'm going to be very clear,  
20 I don't want to hear about those numbers, and I don't want to  
21 see them anywhere on these screens unless I made a ruling that  
22 permits you to do that.

23 Are we -- are we on the same page?

24 MR. MARKETOS: Yes, Your Honor. They -- they are all  
25 over Janssen's documents, so we'll -- we'll make sure that --



1 THE COURT: Are those documents that you all agreed  
2 are going to be before the jury, that they're --

3 MR. MARKETOS: I believe they -- yeah, I believe they  
4 have said -- agreed to some but objected to others. I think  
5 where -- I think I've learned that where the number is  
6 involved, they've lodged an objection, so we'll make sure that  
7 we address that by --

8 THE COURT: All right. Is that accurate?

9 MS. BROWN: Well --

10 THE COURT: Only because I feel like you're wasting a  
11 lot of my time if you guys haven't -- if you're not objecting  
12 to documents in which this information is going to come out  
13 anyway, why even bother talking about it?

14 MS. BROWN: We -- no. We are -- we are, Your Honor.  
15 We are trying to negotiate with them consistent with the  
16 Court's ruling where we had originally objected to this coming  
17 in at all. We understand that was overruled, but we are  
18 maintaining our objection to the numbers for the reasons we've  
19 just gone over.

20 THE COURT: All right. Understood.

21 So all right. Counsel, then you're all going to have  
22 to look at those exhibits, right? I don't want anything  
23 popping up before this jury that I've ruled shouldn't be  
24 there.

25 But I'll leave it to counsel to work that out, and you

1 may even want to meet and confer a little bit with these  
2 exhibits just to make sure everybody is on the same page, but  
3 this isn't very difficult, right?

4 It's a redaction of some dollar amounts, and I'm not  
5 even really going to address the redactions. I don't see any  
6 need to do that unless you all are requesting that I do that.  
7 That's different.

8 If you all think that certain documents are going to  
9 have redactions that are going to be visible to the jury and  
10 you want some type of instruction to clarify that, then why  
11 don't you all meet and confer first and then talk to me about  
12 it.

13 I'm open to it, but usually I wouldn't say anything  
14 unless the parties think it's important or at least one party  
15 is advocating for it, so...

16 MR. MARKETOS: Sure.

17 THE COURT: What else, Mr. Marketos?

18 MR. MARKETOS: Nothing, Your Honor. I took too much  
19 time already.

20 THE COURT: No, no. That's fine.

21 Janssen, do we have anything further we need to chat  
22 about before your break?

23 MS. BROWN: No, Your Honor. Thank you.

24 THE COURT: All right. If you guys need an extra few  
25 minutes, let me know, but for now, we're supposed to be back

1 at 1:15, but if you need extra time, let my staff now.

2 THE DEPUTY COURT CLERK: All rise.

3 (Luncheon recess was taken from 12:25 p.m. until 1:28  
4 p.m.)

5 THE DEPUTY COURT CLERK: All rise.

6 THE COURT: Folks, have a seat. Thank you.

7 Have we got to chat about anything, or should we bring  
8 in the jurors?

9 MR. MARKETOS: We're ready, Your Honor.

10 THE COURT: Anything from your folks? No?

11 MS. BROWN: No. Thank you, Judge.

12 THE COURT: All right. Kim, do you want to --

13 MR. MARKETOS: Your Honor, excuse me. We probably  
14 need to invoke the rule about that testimony that's going to  
15 start. Witness exclusion, but we would request that experts  
16 be excepted.

17 THE COURT: Oh, you mean as far as sequestration?

18 MR. MARKETOS: Yes. Witnesses who are going to  
19 testify not be in the courtroom while others are --

20 THE COURT: All right. And have you guys talked  
21 about this?

22 MS. BROWN: No, but I don't have an objection. It's  
23 okay.

24 THE COURT: All right. Well, then so be it. You're  
25 saying that any witness -- any fact witness will be outside

1 the courtroom and any experts can remain? Is that what you've  
2 all agreed to?

3 MR. MARKETOS: Yes.

4 MS. BROWN: That's fine. I have no problem.

5 THE COURT: All right. So, then, are you -- I know  
6 you're asking me this, but I want to make sure you understand.  
7 It's incumbent upon counsel to ensure that that's going on. I  
8 can't walk around and know where your witnesses are and make  
9 sure they're not in the courtroom.

10 So I'm happy to say that's fine, that's the arrangement  
11 that we'll keep for the trial, but it's incumbent upon counsel  
12 to make sure that your witnesses are aware of that.

13 And, then, do we need to make sure we've got a place to  
14 put them when they're being lined up? Where are they going to  
15 be? If they're not in the courtroom --

16 MR. MARKETOS: There's a room downstairs.

17 THE COURT: All right. So you guys are going to work  
18 that out. All right. So make sure you're talking to -- well,  
19 more so on your side, but witnesses as you're lining them up,  
20 Hey, you can't just walk in the courtroom. We'll come get  
21 you.

22 MR. MARKETOS: It's more of a logistical problem for  
23 us, I think.

24 THE COURT: Yeah. All right. But you guys have all  
25 agreed to, so that's fine, but you're saying your experts on

1 either side can hang out in the courtroom?

2 MR. MARKETOS: Yes, Your Honor.

3 THE COURT: All right. And, Kim, to the extent we  
4 need to assist with anything, feel free to reach out if you  
5 guys need some coordination or some logistics or some help  
6 with, Hey, we have these four or five witnesses, or if there's  
7 a concern there.

8 THE DEPUTY COURT CLERK: There's only like two people  
9 waiting. There's chairs outside --

10 THE COURT: So they could probably just hang out there.  
11 All right.

12 What else? Anything else?

13 MR. MARKETOS: No, Your Honor. Thank you.

14 THE COURT: All right. Ms. Brown, anything?

15 MS. BROWN: No. Thank you, Judge.

16 THE COURT: Let's get the jurors.

17 (Jurors enter the courtroom.)

18 THE DEPUTY COURT CLERK: All rise.

19 THE COURT: Folks, everybody be seated.

20 Are you coming up for -- are you calling a witness?

21 MR. RUSS: Yes, Your Honor.

22 THE COURT: Oh, all right. Yeah. Why don't we start  
23 with witnesses.

24 So who is the first witness?

25 MR. MARKETOS: Your Honor, Relators will call

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1 Ms. Donna Graham, and Mr. Russ is going to examine her.

2 THE COURT: All right.

3 Kim, you'll swear in the witness? All right.

4 She's just going to swear you in, and then you can --  
5 no, no, that's okay. You can get settled, but she's going to  
6 swear you in, and then you can get situated.

7 MS. GRAHAM: I got my glasses. Thank you. I wasn't  
8 sure if there was water, just in case.

9 (DONNA GRAHAM, HAVING BEEN DULY SWORN/AFFIRMED, TESTIFIED AS  
10 FOLLOWS:)

11 THE DEPUTY COURT CLERK: Please state your name and  
12 the spelling of your last name for the record.

13 THE WITNESS: It's Donna Graham, G-R-A-H-A-M.  
14 (DIRECT EXAMINATION BY MR. RUSS:)

15 Q. Good afternoon, Ms. Graham.

16 A. Hello.

17 Q. My name is Josh Russ. I represent the Relators in this  
18 case, Jessica Penelow and Christine Brancaccio.

19 Do you understand that?

20 A. I do.

21 Q. You and I met a couple months ago.

22 A. Yes.

23 Q. Is that right?

24 A. Yes.

25 Q. And, in fact, we met in person just a couple of days ago.

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1 A. Correct.

2 Q. You understand that my clients have brought a False  
3 Claims Act case against Janssen in this matter?

4 A. I do.

5 Q. And you understand that you are here to testify as to the  
6 facts that you witnessed during your employment at Janssen?

7 A. I do.

8 Q. When were you employed at Janssen?

9 A. From 2006 to 2011.

10 Q. We're going to talk a little bit about the different  
11 roles you held, but, first, introduce yourself to the jury.

12 A. Hi. My name is Donna Graham. I am originally from  
13 outside of Philadelphia. I have been in the pharmaceutical  
14 industry for 30 years with a couple different companies, and I  
15 currently reside in Colorado.

16 Q. Did you go to college, Ms. Graham?

17 A. I did.

18 Q. Where did you go?

19 A. Penn State.

20 Q. Did you -- did you go to work in the pharmaceutical  
21 industry after graduating from college?

22 A. Not directly. Within, like, two years.

23 Q. So within two years, where did you first start in the  
24 pharmaceutical industry?

25 A. In Hoffmann-La Roche.

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1 Q. Say that one more time?

2 A. In Hoffmann-La Roche.

3 Q. What is Hoffmann-La Roche?

4 A. It is a pharmaceutical company based in Nutley,  
5 New Jersey, or they used to be. I don't think they're there  
6 any longer.

7 Q. What did you for Hoffmann-La Roche?

8 A. I was a sales representative.

9 Q. Explain to the jury what a pharmaceutical sale  
10 representative does.

11 A. So what we're hired to do is go into the doctors' offices  
12 and talk to them about our product to create brand awareness,  
13 to talk about the disease state and why our drugs should be  
14 prescribed for particular patients.

15 Q. When you were at Hoffmann-La Roche, were there particular  
16 products that you sold?

17 A. Yes.

18 Q. What were those?

19 A. It was Rocephin. It was Zantac. It was Toradol. It was  
20 Versed. It was Romazicon. It was Proviron A, Ceftin. I  
21 believe that was it.

22 Q. Give the jury a sense for the disease states that those  
23 drugs were designed for.

24 A. Sure. So Rocephin was an injectable antibiotic. Versed  
25 is an anesthesia drug. Romazicon is the reversal agent for



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1 that. Toradol is an injectable pain reliever. Ceftin was  
2 like an upper respiratory infection antibiotic. And Zantac,  
3 I'm sure everybody knows, is, you know, for GI upset.

4 Q. Did you sell any drugs or promote any drugs when you were  
5 at Hoffmann-La Roche that were HIV drugs?

6 A. Oh, yes, I did. I'm sorry. I sold Hivid, too. Yes.  
7 That second HIV drug that was out on the market.

8 Q. Around what year was this, Ms. Graham?

9 A. When it was approved. I'm going to say probably early  
10 2000s, like maybe 2003.

11 Q. You were selling Hivid?

12 A. I was.

13 Q. In the early 2000s or around there?

14 A. Correct.

15 Q. Were you familiar with the HIV disease state when you  
16 were selling that medicating?

17 A. Yes.

18 Q. So let me back up. What was the -- based on your  
19 experience, what was the HIV disease state like in the early  
20 to mid-'90s?

21 A. It was devastating because it was, you know, a death  
22 sentence. I mean, there really wasn't any options out there  
23 other than AZT, and Hivid was the next drug to come out.

24 So, you know, at that time, there were only two drugs  
25 to be used.

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1 Q. Did that eventually change?

2 A. Very much so.

3 Q. And we're going to talk about that.

4 So when you were selling Hivid, were calling on -- when  
5 I say calling on, were you meeting with doctors that  
6 prescribed these drugs?

7 A. Yes.

8 Q. Describe to the jury what the day-to-day looks like  
9 with -- for pharmaceutical representatives selling Hivid, for  
10 instance.

11 A. Well, it was -- it was -- I was in Philadelphia at the  
12 time; I was not in New York. You know, I was calling on HIV  
13 physicians and trying to talk to them as to why they should  
14 use Hivid. A lot of times it may have been considered a  
15 little easier to take than AZT. I don't know if any of you  
16 have seen "Rent," but, you know, if you remember, they had to,  
17 like, set their watches every six or eight hours when they had  
18 to take the product.

19 You know, people were not surviving HIV. AZT, taking  
20 it that many times was very toxic. They were very sick from  
21 the medications. You know, it was just -- it was awful,  
22 honestly.

23 Q. You mentioned "Rent." Is that the reference to that  
24 there was a -- sort of a high pill burden for HIV?

25 A. Yes.

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1 Q. When you were selling Hivid -- and then we'll talk about  
2 some other HIV medications that you sold -- did you learn that  
3 that pill burden was an important metric that the doctors were  
4 looking for for what they were prescribing?

5 A. Not at that time. I mean, there was only really two  
6 options. There was AZT and Hivid. And they were just looking  
7 to try and extend people's lives, right? It wasn't -- as more  
8 drugs came out, those things became more important.

9 Q. Okay. And we'll talk about that.

10 After your time at Hoffmann-La Roche did you go to  
11 another pharmaceutical company?

12 A. I did.

13 Q. Explain to the jury where you went after that job.

14 A. I went to Bristol-Myers Squibb.

15 Q. Is that sometimes BMS?

16 A. Yes.

17 Q. Where did you go to work for BMS?

18 A. I was in New York.

19 Q. New York City?

20 A. Yes.

21 Q. What were you selling for Bristol-Myers?

22 A. I sold Zerit. I sold Videx. I sold Sustiva, and I sold  
23 Reyataz.

24 Q. What types of drugs were those?

25 A. So Zerit was a nucleoside inhibitor. Videx was a

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1 non-nucleoside reverse transcriptase inhibitor. Reyataz was a  
2 protease inhibitor, and Sustiva was a -- I can't remember the  
3 drug, but I was -- no, that was a non-nucleoside reverse  
4 transcriptase inhibitor. Sorry.

5 Q. All right. There's a lot of words there.

6 A. Yeah.

7 Q. You said Zerit was what type of drug?

8 A. It was --

9 Q. Well, let me back up. All of these are HIV medications?

10 A. Yeah. So, I mean, to make it simple, you know, at that  
11 time what they were doing is choosing different drugs from  
12 different disease -- or different categories or different  
13 mechanisms of actions in order to target the HIV molecule to  
14 prevent it from replicating. So, you know, it became known as  
15 a cocktail.

16 Q. And you were selling four different HIV medications at  
17 Bristol-Myers?

18 A. I was.

19 Q. And you mentioned one of them was Reyataz.

20 A. Correct.

21 Q. What was Reyataz?

22 A. That was a protease inhibitor.

23 Q. Explain to the jury what a protease inhibitor is.

24 A. It's been a minute, but a protease inhibitor, essentially  
25 what it does is it cleaves part of the nucleus of the HIV

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1 molecule, so it prevents it from escaping and causing  
2 virologic replication.

3 So it's preventing the -- helping to prevent the  
4 disease from replicating in the body, because it replicates,  
5 like, a billion times a day.

6 Q. So let's go through the medications that you sold to this  
7 point.

8 Hivid?

9 A. Yes.

10 Q. Is Hivid a good drug?

11 A. Not particularly.

12 Q. Okay. Is Zerit a good drug?

13 A. Yes.

14 Q. Was Videx a good drug?

15 A. It was marginal.

16 Q. Was Sustiva a good drug?

17 A. Yes.

18 Q. And was Reyataz a good drug?

19 A. Yes.

20 Q. And, in fact, did Reyataz become one of the more popular  
21 drugs that you were selling in the New York area?

22 A. Yes. Particularly in treatment-naive patients.

23 Q. Explain that. What is a treatment-naive patient?

24 A. It's somebody that had never taken an antiretroviral  
25 before, or they could have been naive to that drug class.

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1 Right?

2 So, like, Sustiva was in a completely different kind of  
3 drug class, and generally what they would do is they would  
4 choose, like, a Zerit and Videx -- or together, or a Zerit and  
5 the 3TC together with either a protease inhibitor, such as  
6 Reyataz, or perhaps they would choose Sustiva.

7 So generally you would choose between a protease  
8 inhibitor and non-nucleoside reverse transcriptase inhibitor.

9 Q. Walk us through. You talked a little about your time at  
10 Hoffmann-La Roche.

11 Was your time roughly similar or about similar to what  
12 you do day-to-day when you're at Bristol-Myers?

13 A. Not really, because I sold a lot of drugs at Hoffmann-La  
14 Roche that were in various therapeutic classes. When I went  
15 to Bristol-Myers, it was nothing but HIV medications. So I  
16 was really focused on, you know, just the HIV disease state.

17 Q. And was that in roughly 2003-2004?

18 A. I joined Bristol-Myers in 2006. I'm sorry. I -- that's  
19 Janssen.

20 I joined Bristol-Myers -- I think it was 1997.

21 Q. Okay. So let me make sure that I understand the  
22 timeline, then.

23 Hoffmann-La Roche would have been before that, then?

24 A. Yes. I'm sorry, yeah.

25 Q. Okay. So when you talk --

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1 A. I kind of don't really think of them as being an HIV that  
2 much because the drug was very toxic and caused a lot of  
3 pancreatitis, so I kind of forget that one sometimes.

4 Q. Bristol-Myers was late '90s.

5 A. Yes. I think I went there in 1997.

6 Q. Do you recall roughly how long you stayed at BMS?

7 A. Nine years.

8 Q. Nine years.

9 And the whole time you were selling HIV medication?

10 A. Yes.

11 Q. Were you -- what does it look like when you're going into  
12 a doctor's office to talk to that doctor to try to convince  
13 them to prescribe your drug?

14 A. It was kind of emotional. Right? I mean, you know, I  
15 felt very compelled to help HIV people because I don't feel  
16 like anybody, regardless of their race or their sexuality or  
17 whatever their choices are, should die from a terminal  
18 disease.

19 You know, I recall going into one doctor's office when  
20 I had first moved to New York, and he opened up a closet in  
21 his office, and it was filled with nothing but files of people  
22 that had died.

23 You know, fortunately, as the years went on, that  
24 became less and less so because it became more of a chronic,  
25 manageable disease.

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1 Q. Is one of your jobs as a sales representative to  
2 establish trust with the prescriber?

3 A. Yes.

4 Q. And how would you do that?

5 A. I mean, I think the best way to do that is a couple  
6 different ways. Right? You have a very clinical conversation  
7 with them about what the drug's efficacy is, what the safety  
8 profile is, you know, what they can expect from the drug. And  
9 also helping them along the way -- you know, it was really  
10 kind of a total office call.

11 Like, of course we talked to the physicians, but, you  
12 know, especially in the HIV clinics in the hospitals, you  
13 know, we would talk to the social worker and we would talk to  
14 the nurse, and it was trying to get people to be adherent to  
15 their medications.

16 So it was very -- there was a lot of different levels.  
17 Right? I mean, it wasn't just the physician, but it was a lot  
18 of people in the office.

19 So, yeah, I mean, it was very important to establish  
20 trust and also to know that they can rely on you and also to  
21 know that, you know, you're kind of part of the treatment team  
22 in some respect.

23 Q. Roughly how many doctors did you call on at  
24 Bristol-Myers?

25 A. Well, I mean, there was four of us in the city, so



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1 probably 50, 60.

2 Q. 50 or 60 doctors?

3 A. Yes.

4 Q. Or prescribers?

5 A. Yes.

6 Q. Does that include nurses?

7 A. Well, nurses don't prescribe, but nurse practitioners are  
8 the physician's assistant.

9 Q. That's right, nurse practitioners.

10 A. Yeah, maybe 65.

11 Q. Ms. Graham, during your time with those two companies,  
12 and since then, you've remained in the pharmaceutical industry  
13 for some time.

14 A. Yes.

15 Q. In fact, if you could just describe some of the  
16 pharmaceutical companies that you've worked at since  
17 Bristol-Myers Squibb?

18 A. Well, since Bristol-Myers Squibb, I went to Janssen and  
19 continued to sell HIV drugs for five years.

20 When I left Janssen, I went to go work for a company  
21 called Monogram Biosciences, which -- they did resistance  
22 testing for HIV.

23 You know, I took a couple little stints along the way  
24 selling molecular diagnostic testing but, you know, have since  
25 gotten back into pharma and have been in pharma for the last

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1 several years.

2 Q. During your time in the pharmaceutical industry,  
3 Ms. Graham, did you learn about something called off-label  
4 marketing?

5 A. Yes.

6 Q. What's your understanding of what that means?

7 A. Well, we're very regimented by what is in the package  
8 insert. So, you know, you cannot speak to or promote the drug  
9 or the product outside of what is in that little white piece  
10 of paper that you get with your prescription.

11 Q. Is there an agency that approves that label?

12 A. Yes. The FDA.

13 Q. Is that the Food and Drug Administration?

14 A. It is.

15 Q. Were you trained on off-label marketing before you got to  
16 Janssen?

17 A. Yes.

18 Q. Was it aspirational or was it black and white?

19 A. Oh, it was pretty black and white.

20 Q. And has it been throughout your time in the  
21 pharmaceutical industry?

22 A. Always.

23 Q. Let's transition now to talk about your time at Janssen.

24 A. Okay.

25 Q. Well, before we get there, did you meet Ms. Penelow at

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1 Bristol-Myers?

2 A. I did.

3 Q. Was she also a salesperson?

4 A. She was.

5 Q. And you didn't meet Christine Brancaccio, my client, at  
6 Bristol-Myers, did you?

7 A. I did not.

8 Q. So when did you go to work for Janssen?

9 A. In 2006.

10 Q. Explain why you went to Janssen.

11 A. So I was working for Bristol-Myers Squibb, and I sold --  
12 you know, like, I went through the four products that I sold  
13 for. You know, as time would go on, newer HIV products would  
14 come out. And when I looked at some of the clinical data  
15 about Prezista, it made me really excited about it. I thought  
16 the molecule was really good. It was really going to be a  
17 great product.

18 And, you know, after being at -- nine years at BMS, I  
19 was a little bored. I felt like I needed a new challenge, so  
20 I went to Janssen.

21 Q. When -- and how long were you at Janssen?

22 A. Five years.

23 Q. In fact, you held various positions at Janssen.

24 A. I did.

25 Q. So in 2006, 2007, where did you start?

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- 1 A. I was a sales rep in Manhattan.
- 2 Q. Were you calling on some of the same doctors that you
- 3 were calling on in your previous job?
- 4 A. Exactly.
- 5 Q. The exact same doctors?
- 6 A. Pretty much, yes.
- 7 Q. How long were you a sales rep in New York?
- 8 A. From January 2006 until April 2007.
- 9 Q. And that was in the -- I think you said Manhattan?
- 10 A. The Upper West Side.
- 11 Q. Now, I want to come back to your time as a sales rep.
- 12 But in 2007, did you get a promotion?
- 13 A. I did.
- 14 Q. What promotion?
- 15 A. I was a national sales trainer.
- 16 Q. So did you stay in Manhattan?
- 17 A. I didn't. I moved here to New Jersey.
- 18 Q. Did you go to the home office?
- 19 A. I did.
- 20 Q. Is that sort of the same as the headquarters?
- 21 A. For that division, yes.
- 22 Q. That division of Janssen.
- 23 A. Yes, yes.
- 24 Q. At the time that you joined Janssen, was it -- did it go
- 25 under the name -- or use the name Tibotec?

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1 A. Yes.

2 Q. Explain to the jury what Tibotec was.

3 A. Tibotec was a division within Johnson & Johnson or  
4 Janssen that was dedicated specifically to the HIV meds.

5 Q. What were your job obligations and duties while you were  
6 in the national sales group?

7 A. Several things. I would put out a lot of communications  
8 to the field about, you know, whatever needed to be trained.  
9 I was responsible for training any new hires. I was also  
10 responsible for ongoing training for the current  
11 representatives. I held workshops at national sales meetings.  
12 I trained anybody that came in on the disease state.

13 For example, you know, if -- when Mark Gossett came,  
14 who was the vice president, I had -- like, I did a training  
15 session with him to teach him about HIV and to teach him about  
16 the products.

17 So ongoing training and -- as well as trained the  
18 trainers. We had dedicated field trainers that helped me,  
19 like out in the field as opposed to just being in the home  
20 office, and I would train the trainers, too.

21 Q. During your time as a national sales trainer, did you  
22 work closely with some of the executives of the company?

23 A. I mean, yes, but not every day. But I certainly had  
24 access to them. It was not a large office.

25 Q. Can you describe for the jury some of the people that you

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1 worked with at the home office.

2 A. Sure. So, I mean, there was Glenn Mattes, who was the  
3 president. There was Mark Gossett, who was the vice  
4 president. There was Mike Yancovitz, who was the national  
5 sales director as well as the training director. I worked  
6 with the medical team. Guy De La Rosa, I think, was the  
7 medical director for Prezista. Jim Witteck, I think, was for  
8 Intelence.

9 And it's been a minute. It's been several years, so  
10 I'm hoping that this is all correct.

11 You know, I worked with the marketing department, Ben  
12 Kozub for Prezista, Joe Valeriani for Intelence, as well as  
13 Candace Long for Intelence.

14 So, you know, it was a very multifunctional kind of  
15 group.

16 Q. We'll talk a little bit more later this afternoon about  
17 your time at the home office, but in 2009, did you go back out  
18 in the field?

19 A. I did.

20 Q. Did you go back to becoming a sales rep?

21 A. I did.

22 Q. Did you go back to New York?

23 A. No, it was here in New Jersey.

24 Q. Did you do the same job in New Jersey that you were doing  
25 in Manhattan?

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1 A. I did.

2 Q. How long did you do that?

3 A. For two years.

4 Q. So you were calling on doctors that were in New Jersey  
5 for those two years?

6 A. Correct.

7 Q. Or nurse practitioners?

8 A. Yes, uh-huh.

9 Q. We mentioned the FDA. Ms. Graham, at your time in the  
10 health care world, have you run across training or experience  
11 with something called the Anti-Kickback Statute?

12 A. Yes.

13 Q. What is your understanding of what that is?

14 A. That you can't pay providers or -- yeah, any provider for  
15 a prescription.

16 Q. Ms. Graham, during your time at Janssen, did you  
17 experience conduct that you believed was illegal?

18 A. I did.

19 Q. Describe for the jury what you saw.

20 A. I mean, there was illegal marketing practices where we  
21 were promoting outside of the package insert to the providers,  
22 both were Intelence as well as for Prezista.

23 You know, the speaker programs, we chose the speakers  
24 based upon, you know, their potential in order to --  
25 particularly when the drug was first approved. You know,

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1 we -- we were being measured on medical information request  
2 forms, which are supposed to be unsolicited.

3 Q. Okay. Let's talk about some of that. Let's start in  
4 2006.

5 Was Prezista launched in 2006?

6 A. It was.

7 Q. And was that also a protease inhibitor?

8 A. Yes, it was.

9 Q. The same as Reyataz?

10 A. Correct.

11 Q. So is Reyataz one of the competitors for Prezista?

12 A. Yes.

13 Q. You had actually sold Reyataz, right?

14 A. I did.

15 Q. When did you join? Was it in the spring of 2006 before  
16 the launch of Prezista?

17 A. I think I joined in, like, January or February of 2006.  
18 I don't think the launch was until June.

19 Q. Did you learn when the launch -- when the label -- or  
20 package insert was approved that Prezista was approved for  
21 what's called a limited indication?

22 A. Yes, it was very specific. It was for  
23 treatment-experienced patients who had failed at least one  
24 protease inhibitor.

25 Q. You mentioned earlier -- you described what



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1 treatment-naive patients were.

2 A. Yes.

3 Q. Is that what treatment-experienced patient is?

4 A. Yes. So a treatment-experienced patient, when you're  
5 specifically talking about a protease inhibitor, is someone  
6 that had previously been on a protease inhibitor.

7 Q. When you joined Janssen, did you become aware of some of  
8 the sales forecasts that Janssen had for Prezista for the  
9 first year or two?

10 A. Yes.

11 Q. And what were they?

12 A. What were the numbers?

13 Q. No, not specifically. Describe the forecast for the  
14 jury.

15 A. Oh, it was, I thought, completely unrealistic for what  
16 the indication for the drug was.

17 Q. Why did you believe that?

18 A. Because the treatment-experienced patients that had  
19 failed one or more protease inhibitor and was resistant to  
20 other protease inhibitors was a relatively small group of  
21 patients compared to the entire HIV community.

22 Q. And you were selling Reyataz for treatment-experienced  
23 and treatment-naive patients?

24 A. Yes.

25 Q. Was that a -- the treatment-naive patients, was that a

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1 larger population of patients?

2 A. Yes.

3 Q. Significantly so?

4 A. Yes.

5 Q. Did you --

6 A. But can I clarify that?

7 Q. Yes, ma'am.

8 A. So, you know, again, I just want to add this distinction.

9 Like, treatment-naive was that they were naive to a  
10 protease inhibitor. They could have been on something like an  
11 NNRTI, which was Sustiva. So it was specifically, you know,  
12 naive to a protease inhibitor.

13 Q. Were you able to meet your -- let me back up.

14 Were there sales goals for you that were attached to  
15 the projections that the company had for the sale of Prezista?

16 A. Yes.

17 Q. Describe, generally, what those sales goals were.

18 A. Again, I just felt that they were not congruent with what  
19 the patient population was. So they were very aggressive. It  
20 felt unattainable. You know, I just don't think they were  
21 realistic for what our indication was.

22 Q. Based on your experience to that point with HIV patients,  
23 did you believe that you could meet your sales goals based on  
24 the limited indication that Prezista was approved for?

25 A. No.

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1 Q. Did other salespeople meet their goals the first year?

2 A. No. Not to my knowledge.

3 Q. Did you talk with other people that you worked with about  
4 the sales goals and expectations that the company put on you?

5 A. Yes.

6 Q. What were those -- describe to the jury what those  
7 discussions consist of.

8 A. I mean, it was pretty much what I just described.

9 Everybody talked about how unrealistic they were, how  
10 unattainable they were. You know, based upon the indication,  
11 there was no way that we were going to attain those lofty  
12 goals.

13 Q. Did they adjust your goal?

14 A. No.

15 Q. What did they do instead?

16 A. They told us that we needed to find a way to meet the  
17 goals because -- I mean, not only was -- were those numbers  
18 promised to the board of directors, but they were also  
19 promised to Wall Street.

20 Q. Did you change the way that you were selling the drug  
21 based on the fact that projections weren't realistic?

22 A. We did.

23 Q. What did you do?

24 A. Well, we instructed that we wanted to say this is not a  
25 salvage patient. Our goal was to move the prescribing of

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1 Prezista up in the treatment paradigm.

2 So, you know, do not save it as a last resort. You  
3 know, move it up in the treatment paradigm to include  
4 treatment-naive patients.

5 Q. Were treatment-naive patients on the label at that time?

6 A. No.

7 Q. Did they become approved for Prezista in 2008?

8 A. They did.

9 Q. Did you and your colleagues sell Prezista as appropriate  
10 for treatment-naive patients before 2008?

11 A. We did.

12 Q. Was there another concern around selling Prezista related  
13 to lipids or cholesterol?

14 A. Yes.

15 Q. Explain to the jury what that was about.

16 A. So Prezista needed to be boosted with another protease  
17 inhibitor called ritonavir, and ritonavir in and of itself  
18 could increase lipid levels, total cholesterol triglycerides.

19 HIV in and of itself can also cause issues with total  
20 cholesterol and triglycerides, LDL, HDL.

21 So to, you know, position the fact that Prezista was  
22 something that was lipid neutral or, you know, minimal impact  
23 on lipids, it's very different than what we were told to say  
24 about it being lipid friendly.

25 To put that in context, when I sold Reyataz, Reyataz

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1 for treatment-naive patients, you did not used to -- you did  
2 not need to use ritonavir with it.

3 So just by definition, Reyataz was much more lipid  
4 friendly than Prezista plus ritonavir. We didn't really make  
5 that distinction. We just kept saying that it was lipid  
6 friendly, which it -- that's incorrect, in my opinion. Did it  
7 have a minimal impact on lipids compared to the drug that it  
8 was tried against in the clinical trials, which was Kaletra?  
9 It did.

10 But to take it a step further and say that it was lipid  
11 friendly is not accurate.

12 Q. Did you also sell Prezista using the phrase "lipid  
13 neutral"?

14 A. I think that was used, yes. I can only personally say,  
15 you know, lipid friendly was kind of beaten into our heads.

16 Q. What about -- did you sell Prezista as being the same as  
17 Reyataz?

18 A. Yes.

19 Q. Is that appropriate?

20 A. No.

21 Q. How do you know that?

22 A. Well, just by definition, because you had to use Prezista  
23 with ritonavir; you did not have to use Reyataz with  
24 ritonavir.

25 Q. So you mentioned that there was a study that was on-label

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1 comparing Prezista to a drug called Kaletra?

2 A. Correct.

3 Q. Was there at any point during your time at Janssen a  
4 study on-label comparing Prezista to Reyataz?

5 A. No.

6 Q. Was it your understanding that you could promote to  
7 doctors in their office that it is the same as Reyataz?

8 A. No, because you need a head-to-head study within your  
9 label to do so, and we did not have one.

10 Q. So let's talk about the studies for a second. We're  
11 going to look at some of the documents.

12 A. Okay.

13 Q. Is there a difference between an FDA-approved study and  
14 just a study that a company does --

15 A. Yes.

16 Q. -- on a drug?

17 A. Yes.

18 Q. Explain to the jury what the difference is.

19 A. Well, let me qualify that a little bit. So there's --  
20 any -- the critical trials are what are done in order to  
21 approve the drug, and that goes into the package insert, into  
22 the label of the product. So we are bound by just talking  
23 about the clinical trials that are in the package insert.

24 Now, there's certainly other peer-reviewed trials that  
25 go on. There's other trials that happen that researchers

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1 decide, Oh, let me take a look at this compared to that, and  
2 they do, and the data is published.

3 But we are not allowed to talk about those because it's  
4 not in the label.

5 Q. So the label is sort of your -- your road map. You've  
6 got --

7 A. It's your compass, yeah.

8 Q. You have to stay between the lines of the label?

9 A. Correct.

10 MR. RUSS: If we could pull up, Ms. Johnson,  
11 Relators' 353.

12 MS. BROWN: Can we have a copy -- I'm sorry.

13 THE COURT: Has this been admitted?

14 MR. RUSS: I don't want to publish it, Ms. Johnson.

15 THE COURT: Yeah. Let's be careful about that.

16 (Conversation between counsel.)

17 MS. BROWN: Your Honor, can we approach for a second?

18 THE COURT: Yes.

19

20

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1 (Sidebar begins at 2:00 p.m.)

2 MS. BROWN: We need to figure out a way to get a  
3 copy.

4 MR. RUSS: Our copies are electronic, but you have  
5 the same copies electronically.

6 MS. BROWN: I just always do paper copies. I missed  
7 a disconnect. I'm sorry. I need -- if that's the case, I  
8 just need to take a second to pull them out because I don't  
9 have access to it --

10 MR. RUSS: Absolutely.

11 THE COURT: You can pull it up electronically?

12 MS. BROWN: I'm going to see if these guys can. I  
13 don't even have my computer.

14 THE COURT: Let's find out if you can pull it up.  
15 All right.

16 MS. BROWN: Okay. Yeah. Okay.

17 THE COURT: Is it going to take a minute?

18 MS. BROWN: I'll make it work.

19 MR. RUSS: While you're doing that --

20 MS. BROWN: Yeah.

21 MR. RUSS: -- we have a list of exhibits that there's  
22 no objection to.

23 MS. BROWN: I'll just have my folks print it. I just  
24 would like a paper copy. I don't want to hold people up. I  
25 just -- I need a copy.



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1 THE COURT: Got it. But you have it electronically.  
2 You have access to it.

3 MS. BROWN: I'm going to ask these guys to pull it up  
4 for me.

5 THE COURT: Let's figure that out. I mean, do you  
6 need time, then, to do that? I mean, they should be able to  
7 do that.

8 MS. BROWN: I don't want to hold people up --

9 THE COURT: All right. So we're going to --

10 MS. BROWN: So if I have an issue, I'll let the Court  
11 know, but I don't want to hold us up.

12 THE COURT: Thank you.

13 MS. BROWN: Thank you.

14 THE COURT: Yep.

15 (Sidebar was concluded at 2:00 p.m.)  
16  
17  
18  
19  
20  
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1 (Open court.)

2 THE COURT: You may proceed, Mr. Russ.

3 MR. RUSS: Thank you, Your Honor.

4 Your Honor, RX 353 there's no objection to. We would  
5 move to admit it under an agreement with Janssen's counsel.

6 THE COURT: All right. There's no objection,  
7 Ms. Brown?

8 MS. BROWN: No, Your Honor. Thank you.

9 THE COURT: So it's admitted.

10 Now, I don't care. Yeah. I just want to be careful,  
11 folks. If you publish it, it's got to be admitted.

12 (Plaintiffs' Exhibit 353 in evidence.)

13 MR. RUSS: Permission to publish, Your Honor?

14 THE COURT: You may.

15 BY MR. RUSS:

16 Q. Ms. Graham, do you recognize this document?

17 A. Yes.

18 Q. Is it a strategy review presentation from July 12, 2006?

19 A. Yes, it is.

20 Q. And you were -- you saw these types of documents during  
21 your time at Janssen, correct?

22 A. Correct.

23 MR. RUSS: Let's take a look, Ms. Johnson, if we  
24 could, on Slide 2, under "Key Forecasting Assumptions."

25 THE WITNESS: Uh-huh. Oh, that's great.

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1 BY MR. RUSS:

2 Q. Ms. Graham, do you see at the bottom left corner of that  
3 document there's a phrase that starts "Prezista has GI lipid  
4 advantages"?

5 A. Yes.

6 Q. Can you read the rest of that to the jury, please.

7 A. "Over Kaletra; parity to Reyataz."

8 Q. Was Prezista the same as Reyataz on lipids?

9 A. No.

10 Q. How do you know that?

11 A. Again, just because Prezista needed to be used with  
12 ritonavir and Reyataz did not -- let me clarify that.

13 Ritonavir was used with Reyataz in treatment-experienced  
14 patients. But in treatment-naive patients, you did not used  
15 to have -- you did not have to use it with Reyataz.

16 MR. RUSS: If you could, Ms. Johnson, turn to  
17 Slide 4, please.

18 BY MR. RUSS:

19 Q. Now, Ms. Graham, you talked to the jury a minute ago  
20 about the projections for 2006.

21 A. Uh-huh.

22 Q. What were the projections for the sale of Prezista in  
23 2007?

24 A. It looks like 262 million.

25 Q. Was there a peak sales of almost 1.1 billion?

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1 A. Yes.

2 Q. Was that realistic in your experience?

3 A. Not for the indication at the time, no.

4 MR. RUSS: Let's turn to Slide 5, please.

5 BY MR. RUSS:

6 Q. Ms. Graham, do you see the commercial strategy slide  
7 there?

8 A. I do.

9 Q. Do you see where it says "aggressively promote Prezista's  
10 value proposition"?

11 A. I do.

12 Q. And do you see there's an arrow that says "positioning  
13 and key claims"?

14 A. Yes.

15 Q. The second bullet point, Ms. Graham, will you read that  
16 to the jury?

17 A. "Well tolerated, better GI profile than Kaletra and  
18 similar lipids to Reyataz."

19 Q. Did Prezista have similar lipids to Reyataz?

20 A. No.

21 Q. Was there a warning on Prezista's label or an adverse  
22 reaction as to hyperlipidemia and hypercholesterolemia?

23 A. It was listed as adverse events, yes.

24 Q. Did Reyataz have that same adverse event?

25 A. I don't recall. It -- it may have been a class warning.

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1 I don't recall. I have to look at the Reyataz package insert.

2 Q. You can see it on the Reyataz label?

3 A. You could, yes.

4 Q. If we could to --

5 MR. RUSS: And, Your Honor, I'll move to  
6 Relators' RX 89, which I understand there is also no objection  
7 to.

8 THE COURT: Ms. Brown?

9 MS. BROWN: No objection, Your Honor. Just subject  
10 to foundation with this witness, but the document itself, no  
11 objection.

12 THE COURT: All right. So you can't just admit it,  
13 then. You have to lay a foundation for it through the  
14 witness.

15 MR. RUSS: Sure.

16 BY MR. RUSS:

17 Q. Ms. Graham, did you see documentation --

18 MR. RUSS: Let's just pull it up for the witness  
19 only, please, RX 89.

20 THE WITNESS: Okay.

21 BY MR. RUSS:

22 Q. Do you recognize RX Relators' 89?

23 A. You mean the person who wrote it?

24 Q. No, ma'am. The document.

25 A. Oh, yeah.

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1 Q. Is it a business update that was presented by  
2 Nancy Bartnett?

3 A. Yes.

4 Q. Who is Nancy Bartnett?

5 A. She was the health science manager at the time.

6 Q. Did you work with Ms. Bartnett?

7 A. I did.

8 Q. Did you see business updates during your time as a sales  
9 representative for Prezista in New York when you worked with  
10 Ms. Bartnett?

11 A. Yes. I'm sure they represented at our, you know,  
12 district meetings.

13 Q. Did you see these frequently?

14 A. Probably a couple times a year.

15 Q. Okay.

16 MR. RUSS: Your Honor, at this point, we'd move to  
17 admit RX 89.

18 MS. BROWN: No objection.

19 THE COURT: All right. So admitted.

20 (Plaintiffs' Exhibit 89 in evidence.)

21 MR. RUSS: Ms. Johnson, if you could turn to Slide 3,  
22 please.

23 And if we could publish that for the jury.

24 BY MR. RUSS:

25 Q. Ms. Graham, do you see where it's "business performance

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1 analysis achieved versus goal" on this document?

2 A. Yes.

3 Q. Describe for the jury what this document shows for your  
4 2006 district sales goals.

5 A. It shows how much we sold versus how much we were  
6 expected to sell.

7 Q. And were you on target?

8 A. No.

9 Q. Were you significantly under target?

10 A. Yes.

11 Q. Again, did the leadership of the company change your  
12 sales goals based on this data?

13 A. No.

14 MR. RUSS: If we could, Ms. Johnson, turn to Slide  
15 Number 6.

16 BY MR. RUSS:

17 Q. Ms. Graham, what is Slide Number 6?

18 A. That's showing like prescriber data, so, you know, I  
19 don't know if that's specific to the district or just  
20 somebody's territory. I don't know because it doesn't  
21 designate. I can't remember.

22 But what it's showing you is how much -- how many  
23 dollars were spent for each other drug on the market in the  
24 protease inhibitor market, you know, what the percentage of  
25 growth was, what the total prescription volume was, the total

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1 prescription percentage growth, how many new prescriptions  
2 there were and what was the total prescription market share,  
3 so it's showing year to date and quarter to date.

4 Q. Thank you.

5 Did Janssen keep prescription data and track  
6 prescription data for prescribers?

7 A. Yes.

8 Q. Is this an example of how Janssen tracked that data?

9 A. Yes.

10 Q. Was it also --

11 A. I mean, we bought the data. I mean, you know, it was --  
12 we -- it was like DDD or something was the company at the time  
13 where you could buy prescription data.

14 Q. Did Janssen also track prescription data on a  
15 doctor-by-doctor basis?

16 A. Yes. We would -- it would be that granular, the data  
17 that we would get.

18 Q. And it would show prescriptions by certain time periods,  
19 like maybe the last 13 weeks?

20 A. If I remember correctly, we got it almost weekly.

21 Q. So you got -- Janssen got prescription data on a  
22 doctor-by-doctor basis almost weekly?

23 A. Yes.

24 Q. And that was tracked?

25 A. Correct.



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1 Q. All right. What is on the left of that slide,

2 Ms. Graham?

3 A. It's the name of the drugs on the market.

4 Q. How do you say the second one?

5 A. Aptivus.

6 Q. Is that a competitor drug for Prezista?

7 A. Yeah.

8 Q. Same with Reyataz?

9 A. Correct.

10 Q. Same with Kaletra?

11 A. Yes.

12 Q. All right. So we talked about the HIV disease state back  
13 in the '90s.

14 A. Uh-huh.

15 Q. Right? Now we're in 2006.

16 A. Correct.

17 Q. And I told you we were going to revisit that.

18 A. Uh-huh.

19 Q. Had the HIV disease state changed by 2006?

20 A. Very much so.

21 Q. Explain to the jury how.

22 A. Again, you know, when I first got in it and I was selling  
23 Hivid, it was really -- you know, it was a death sentence. We  
24 only had a couple drugs, and as the drugs came out, they  
25 became better tolerated.

GRAHAM - DIRECT - RUSS

1           They became less time -- less times a day that you had  
2 to take them. The side effect profile was more important  
3 because you had choices.

4           So what we did was track the prescriptions of all the  
5 other drugs on -- you know, that were competitors to ours.

6 Q.   So was it -- well, we'll revisit that in a second.

7           Let me ask you this because I want to talk about the  
8 other drug, and we'll come back to some of these topics.

9           Was there another drug that Janssen launched in 2008?

10 A.   Yes.

11 Q.   What was that?

12 A.   Intelence.

13 Q.   Same as Prezista, did it also have a limited indication?

14 A.   It did.

15 Q.   What were the things that limited the sale of Intelence?

16 A.   Well, it was for treatment-experienced patients, and it  
17 was also twice a day.

18 Q.   So as approved by the FDA, the drug Intelence had to be  
19 taken twice a day?

20 A.   Correct.

21 Q.   Is that sometimes referred to as BID?

22 A.   Yes, it is.

23 Q.   Do you know what that stands for?

24 A.   I don't remember. It's just been so long since I've seen  
25 it spelled out, you know. It's just automatic QD, BID, TID is

GRAHAM - DIRECT - RUSS

1 three times a day.

2 Q. And what is QD?

3 A. Once a day.

4 Q. So QD drug, once a day; BID, twice a day?

5 A. Correct.

6 Q. Intelence was only approved for twice a day?

7 A. That is correct.

8 Q. Okay.

9 When you first started selling Prezista --

10 A. Uh-huh.

11 Q. -- in New York --

12 A. Yes.

13 Q. -- did you run into obstacles in getting physicians to  
14 switch to Prezista?

15 A. Yes. There were a lot of obstacles.

16 Q. Explain to the jury what obstacles you're talking about.

17 A. Well, first of all, when the drug was approved, we only  
18 had 24-week data, so there was very limited data regarding the  
19 safety and efficacy of the product, and as you can see,  
20 there's other drugs that were on the market.

21 So there wasn't really this, you know, excitement to go  
22 ahead and prescribe something new because what happens is, if  
23 a regimen is working for a patient, you want to keep the  
24 patient on that because they're adherent. You want them to  
25 take a drug that they're going to be committed to and to take.

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1           So there's the 24-week data, which was limited safety  
2 as well as efficacy data. It was a BID drug at the time. It  
3 was, you know, somewhat pigeonholed for a  
4 treatment-experienced patient.

5           A lot of physicians thought of it as a last-resort drug  
6 because the indication was treatment-experienced patients who  
7 had failed at least one protease inhibitor.

8           So there were a lot of obstacles. I mean, being in  
9 New York, which was like the epicenter of HIV, you know,  
10 between that and California, you know, the drug, as you can  
11 see, is kind of saturated when you look at the numbers of what  
12 the competitors were doing, particularly for that patient  
13 population.

14 Q. Sure. And at this point, when the disease state had  
15 changed, was there more focus on the side effects that these  
16 drugs were causing patients?

17 A. Yes.

18 Q. And which side effects in particular were most important?

19 A. So, you know, whether it was increasing lipids, whether  
20 it was -- so a couple things with lipodystrophy. It can kind  
21 of manifest itself in a bunch of different ways.

22           Like there was something where people got what they  
23 called buffalo hump on the back of their neck. They would get  
24 what they refer to as Crix belly, so the belly would be very  
25 distended and full of visceral fat.

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1           You would have lipoatrophy, so you would have wasting,  
2   you know, in your cheeks. You know, early on, a lot of these  
3   drugs were toxic. I mean, it's like a chemotherapy. So it  
4   was -- they were not pleasant.

5           So as more drugs came out, the goal was to, you know,  
6   have them take it fewer times a day as well as cause less side  
7   effects.

8   Q.   During your time as a sales representative in Manhattan,  
9   Ms. Graham, did you personally sell Prezista as -- the same as  
10   Reyataz on lipids?

11   A.   Yeah. I mean, we said, Yes, when you look at lipids,  
12   it's the same as Reyataz.

13   Q.   And it's your understanding that that was all part of a  
14   promotion?

15   A.   Well, yes, you can't cross-compare, first of all. We  
16   don't have any head-to-head study with Reyataz. And at that  
17   time, in the treatment-experienced patients, you know, Reyataz  
18   was approved for both.

19           And if, you know -- the assumption is if you say it's  
20   as good as Reyataz, they're thinking about the lipids and the  
21   treatment-naive patients where it was very lipid neutral or  
22   friendly. But we didn't make that distinction between  
23   treatment-experienced patient or not.

24   Q.   Did you -- and you were tracking your physicians'  
25   prescriptions?

GRAHAM - DIRECT - RUSS

1 A. Yes.

2 Q. When you sold Prezista to a -- to physicians in your area  
3 as appropriate for treatment-naive patients --

4 A. Uh-huh.

5 Q. -- did you track those physicians before and after you  
6 provided that message?

7 A. Yes. Oh, yeah. Yes, of course.

8 Q. And what would happen?

9 A. I mean, you would see if you were moving the needle or  
10 not.

11 Q. Did it move the needle?

12 A. Not initially.

13 Q. So you ran into some -- some barriers?

14 A. For sure.

15 Q. Did you -- did you have to take additional steps to move  
16 the needle?

17 A. Yes.

18 Q. What did you do?

19 A. Well, that's when we decided that we're trying to move  
20 the drug up the treatment paradigm where we're going to, you  
21 know, say that it's lipid friendly; that we're going to, you  
22 know, kind of put it on par with treating a treatment-naive  
23 patient with Reyataz.

24 Q. So you're meeting in the office of some of these doctors  
25 you had called on, right?

GRAHAM - DIRECT - RUSS

1 A. Yes.

2 Q. When you were at Bristol Myers?

3 A. Yes.

4 Q. Describe for the jury what that looked like when you were  
5 trying to sell this new drug to these same doctors?

6 A. You know, I thought it was going to be easier than it was  
7 because I have had, like, a nine-year-long relationship with  
8 them. I mean, I got a lot of pushback.

9 A lot of the doctors said it's -- 24-week -- 24 weeks  
10 is not a lot of data. You know, I don't know that Prezista  
11 isn't going to kill somebody if they're on it for longer than,  
12 you know, 24 weeks. I really need 48-week data. I need  
13 96-week data.

14 So, I mean, the data was like the biggest pushback on  
15 a -- I mean, that was the number 1 -- and it was also BID,  
16 but...

17 Q. You eventually were able to convince some of these  
18 doctors to prescribe Prezista, correct?

19 A. Eventually, yes.

20 Q. What was one of the things that you and some of your  
21 sales representatives did for those doctors to get them to  
22 prescribe?

23 A. Yeah. So, I mean, you know, it was pretty strategic  
24 about who we chose to be part of the speaker bureau or get  
25 invited to ad boards.

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1           So, you know, we had a list of the physicians based  
2 upon, you know, their prescribing habits, who was a high  
3 potential versus perhaps a low potential.

4           So we targeted the highest-potential physicians who had  
5 the most patients and that wrote the most protease inhibitors.

6 Q.   Why did you target them?

7 A.   Because they are the ones with all the potential.

8 Q.   Was one of the purposes to get them on the speaker board  
9 to get them writing Prezista?

10 A.   Absolutely.

11 Q.   Did it work?

12 A.   For some, yes.

13 Q.   Let's take a look, if we can.

14           MR. RUSS: Just show the witness RX 183.

15 BY MR. RUSS:

16 Q.   Ms. Graham, do you see the document Relators 183 in front  
17 of you?

18 A.   I do.

19 Q.   Is that Tibotec or a Janssen New York launch plan?

20 A.   It is.

21 Q.   Is this a document you had seen while you were working at  
22 Janssen or similar types of documents?

23 A.   Yes.

24           MR. RUSS: Your Honor, we move to admit RX 183. My  
25 understanding is there's no objection.



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1 THE COURT: Any objection?

2 MS. BROWN: No, Your Honor, thank you.

3 THE COURT: So admitted.

4 (Plaintiff's Exhibit RX 183 in evidence.)

5 MR. RUSS: If we could publish that, Ms. Johnson, to  
6 the jury.

7 BY MR. RUSS:

8 Q. Ms. Graham, who was Frank Murphy?

9 A. He was my district sales manager.

10 Q. Was he your direct boss?

11 A. Yes.

12 Q. Who is Eric Scherr?

13 A. He was -- you know, he did access and reimbursement.

14 Q. What about Nancy Bartnett?

15 A. Again, I forget those acronyms, but she was a health  
16 science manager, but then I think they later called them CAMs.  
17 So that's a little deceiving because it says CAM next to  
18 Eric's name. I don't remember what -- who got what acronym at  
19 that time.

20 MR. RUSS: If we could, Ms. Johnson, turn to page 24.

21 BY MR. RUSS:

22 Q. Ms. Graham, do you see the top of this document, it says  
23 SWOT Analysis?

24 A. Yes.

25 Q. Do you know what a SWOT Analysis is?

GRAHAM - DIRECT - RUSS

1 A. I do.

2 Q. Describe it to the jury, what that means.

3 A. It's strengths, weaknesses, opportunities, and threats.

4 Q. Now, let's spend a little bit of time on this document,

5 Ms. Graham. Do you see on the right that Janssen was keeping  
6 track of the weaknesses of Prezista?

7 A. Yes.

8 Q. And one of those was the providers were not familiar with  
9 Tibotec?

10 A. That is correct.

11 Q. You see another one that's involved there -- it that  
12 says, NY -- New York -- is a takeaway market and not a growth  
13 market.

14 A. Yes, I do.

15 Q. What did that mean?

16 A. The market was really saturated, so the only way to get a  
17 prescription was to take it away from another drug. There was  
18 not a lot of growth. There wasn't a lot of potential for  
19 growth in that patient population.

20 Q. Do you also see in the next bullet point, Ms. Graham,  
21 that Janssen listed a limited indication as a weakness?

22 A. Yes.

23 Q. And then do you see that it also had the 24-week data  
24 that you were talking about?

25 A. Yes.

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1 Q. That was limited data?

2 A. Yes.

3 Q. And then "Highly crowded and very competitive DI and ARV  
4 markets."

5 A. Yes.

6 Q. There were other drugs on the market, Ms. Graham, at this  
7 time?

8 A. Yes.

9 And may I point out something else on this?

10 Q. Yes.

11 A. And I forgot to mention this, but where it says "unclear  
12 resistance profile," you know, after 24 weeks -- so it was  
13 very important that drugs were prescribed in a certain  
14 sequence based upon resistant mutation. Some drugs would not  
15 work if they failed one drug. So it was very important to  
16 sequence them.

17 And with 24 weeks' worth of data, the physicians were  
18 unclear as to really where to place this product or where to  
19 use it in the sequence.

20 Q. Now, you talked about some of the barriers that you had  
21 to selling Prezista in the beginning. Does this match up with  
22 some of the barriers back in 2006?

23 A. Yeah. It does, yes.

24 Q. Okay.

25 On the left, we have the strengths.

GRAHAM - DIRECT - RUSS

1 A. Yes.

2 Q. And one of those strengths, Ms. Graham, was strong  
3 "marketing and training support."

4 You see that?

5 A. Yes.

6 Q. And "experienced CAM with strong relationships"?

7 A. Uh-huh.

8 Q. Was one of the strengths the sales team and the  
9 experience of sales personnel like you?

10 A. Yes.

11 Q. Is that because you had relationships with doctors  
12 already?

13 A. Yes. I mean, for the most part, all of us had already  
14 worked in HIV for many years. I mean, I myself, by the time I  
15 joined Janssen, had, you know, ten-plus years of selling HIV  
16 medications.

17 MR. RUSS: If you could, Ms. Johnson, turn to page 27  
18 at this same exhibit.

19 BY MR. RUSS:

20 Q. Ms. Graham, do you see back in 2006 the same document,  
21 there was a customer market analysis done by Janssen?

22 A. Yes.

23 Q. And let's go through this.

24 Janssen identified it had the -- New York had the  
25 largest amount of Aptivus scrips year-to-date?

GRAHAM - DIRECT - RUSS

- 1 A. Yes.
- 2 Q. And that was a competitor drug?
- 3 A. Correct.
- 4 Q. And it was going to "target top Aptivus, Reyataz,
- 5 Kaletra" -- and how do you say that next one?
- 6 A. Fuzeon.
- 7 Q. -- "Fuzeon prescribers for the district."
- 8 A. Yes.
- 9 Q. Why were you targeting those top prescribers of other
- 10 drugs?
- 11 A. Because we had to take away their market share.
- 12 Q. And when you eventually sold to them, that wasn't
- 13 successful.
- 14 A. Not initially, no.
- 15 Q. And so there were a couple things that we talked about.
- 16 A. Uh-huh. Yes.
- 17 Q. You moved it up in the treatment paradigm.
- 18 A. Correct.
- 19 Q. Off-label.
- 20 A. Correct.
- 21 Q. You compared it to Reyataz.
- 22 A. Correct.
- 23 Q. Off-label.
- 24 A. Correct.
- 25 Q. And then we also talked about how you identified some of

GRAHAM - DIRECT - RUSS

1 these prescribers for a speaker bureau.

2 A. Yes.

3 Q. You see where it says, "Created A, B, and C lists for  
4 speaker potential"?

5 A. I do.

6 Q. What were the A, B, and C lists?

7 A. It was based upon potential and how many prescriptions in  
8 the protease inhibitor market they wrote.

9 MR. RUSS: If we could turn to page 29, Ms. Johnson.

10 BY MR. RUSS:

11 Q. Did Janssen track the prescriptions of its competitor  
12 drugs as the top prescribers for the New York district?

13 A. We track prescriptions for many HIV -- or any HIV  
14 provider, yes.

15 Q. Does page 29 of this exhibit show the top Aptivus  
16 prescribers?

17 A. Yes.

18 Q. Do you recognize some of the names of those doctors?

19 A. Some of them, yes.

20 Q. Did you call on some of those doctors?

21 A. I did not.

22 Q. Okay.

23 MR. RUSS: Let's look at the next page, please.

24 BY MR. RUSS:

25 Q. Again, top Fuzeon prescribers?

GRAHAM - DIRECT - RUSS

1 A. Yes.

2 Q. Top Reyataz prescribers?

3 A. Yes.

4 Q. Do you recognize some of these doctors?

5 A. I do.

6 Q. Which ones?

7 A. I recognize a lot of names, but number 10 in particular  
8 was one of my physicians.

9 Q. Okay. Is that somebody -- let me back up.

10 Did you recommend any of your physicians to be on the  
11 speaker bureau?

12 A. I did.

13 Q. And were they top prescribers?

14 A. Yes.

15 Q. Were they top prescribers of competitor drugs?

16 A. Yes.

17 MR. RUSS: If we could look at the next slide,  
18 please, Ms. Johnson.

19 BY MR. RUSS:

20 Q. Same thing with top prescribers of Kaletra?

21 A. Yes.

22 Q. A competitor drug?

23 A. Yes.

24 MR. RUSS: Next slide, please.

25 If we could turn to slide 37, please.

GRAHAM - DIRECT - RUSS

1 BY MR. RUSS:

2 Q. What is slide 37, Ms. Graham?

3 A. Looks like "Ten key customers to be covered by Frank."

4 That is the district manager.

5 Q. In the parenthetical, it says, "Decile ten physician" --  
6 do you see that?

7 A. I don't see that -- oh, wait, right there, yes. Yes, I  
8 do.

9 Q. Were you identifying -- was Janssen identifying the top  
10 prescribers of HIV medications?

11 A. Yes.

12 MR. RUSS: Next slide, please.

13 BY MR. RUSS:

14 Q. And were those top prescribers on slide 38 listed and  
15 identified here in the top 20 as going on the speaker bureau  
16 in the far right?

17 A. Yes.

18 Q. Do you see on the far right there's a speaker bureau list  
19 of A, B, or C categories?

20 A. I do.

21 Q. Did you participate in categorizing potential speakers at  
22 Janssen?

23 A. I don't know if I participated in essentially  
24 categorizing them, but I certainly submitted names of whom I  
25 thought would be a good candidate.



GRAHAM - DIRECT - RUSS

1 Q. Were the names that you submitted prescribers that you  
2 hoped would increase their prescriptions of Prezista?

3 A. Yes.

4 Q. Is that why you submitted them?

5 A. Yes.

6 Q. Were they ultimately paid by Janssen?

7 A. Yes.

8 Q. I'm going to come back in a little bit to the speaker  
9 program. I want to move on in the timeline of your time at  
10 Janssen to the national sales training.

11 A. Okay.

12 Q. When you became the national sales trainer, was it your  
13 job to train existing Janssen sales reps?

14 A. Yes.

15 Q. Did you train them on off-label promotion?

16 A. Essentially, yes.

17 Q. When you say "essentially," what do you mean?

18 A. Well, it was -- it was -- yeah.

19 So when we would do -- you know, I would do trainings  
20 at the national -- the plan of action meetings that we would  
21 have, you know, generally twice a year. So, yes, there were  
22 some workshops where I was instructed to kind of get them to  
23 the point where they would ask -- they would solicit  
24 unsolicited questions.

25 Q. So let's break that down a little bit.

GRAHAM - DIRECT - RUSS

1 What is soliciting unsolicited questions?

2 A. It's -- it's kind of baiting them, you know. For  
3 example, if somebody's asking for off-label information or  
4 more information about something that is not in the label, it  
5 should be unsolicited.

6 The workshop was, you know, getting right up to that  
7 line and saying, oh, for example, you know, wouldn't it be  
8 great to have some more information about how you could use  
9 Prezista in treatment -- or treatment-naive patients. Why  
10 sure, Donna, it would be. Oh, great. Let me send that  
11 information to you.

12 That's an example of soliciting an unsolicited  
13 question.

14 Q. And you were training sales representatives on how to do  
15 that?

16 A. Yes.

17 Q. Was it your idea?

18 A. No.

19 Q. Whose idea was it?

20 A. I was told by Mark Gossett and Mike Yacovellis that that  
21 was the workshop I would be conducting.

22 Q. Did you push back?

23 A. I did.

24 Q. What did you say?

25 A. I told them I was not comfortable doing that and I

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1 wouldn't do it, and I was told that I would.

2 Q. You were told it was not optional.

3 A. Correct.

4 Q. And did you go forward with it?

5 A. I didn't have a choice.

6 Q. What do you mean you didn't have a choice?

7 A. I mean, it was either that or, you know, probably get  
8 fired.

9 Q. Did you need that job?

10 A. Of course.

11 Q. Did you also train new sales reps at Janssen?

12 A. I did.

13 Q. Was there similar types of training for new sales reps?

14 A. Yeah. I mean, the -- yes. We would, you know, go  
15 through the package insert. We would go through the mechanism  
16 of action. We would go through the disease state. We would  
17 go through, like, the core visual aid, which is what the, you  
18 know, materials you could use in talking to a physician or  
19 presenting to a physician.

20 But what I would do in the -- in the training breakouts  
21 is I would say, you know, Yes, this is what's in the core  
22 visual aid, but, you know, this is what's realistic. Like, we  
23 can't pigeonhole Prezista for, you know, highly  
24 treatment-experienced patients. We're not going to make our  
25 goal. We need to move it up in the paradigm in order to

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1 increase the number of patients or the type of patients that  
2 are going to be prescribed Prezista.

3 Q. Did you think that training was appropriate at the time?

4 A. No.

5 Q. Did you think that training at the time was promoting  
6 off-label use and promotion of the drugs?

7 A. I did.

8 Q. Were you also training on a drug that we talked about,  
9 Intelence?

10 A. Yes.

11 Q. And you mentioned the QD, the once a day versus twice a  
12 day.

13 A. Yes.

14 Q. Did you train sales representatives on how to sell to  
15 doctors that the drug be used once a day?

16 A. Yes.

17 Q. Describe that to the jury.

18 A. You know, kind of the same thing. No documentation about  
19 it. It was in a room, just talking to the sales reps. And,  
20 you know, one of the, I guess, objectives to using Intelence  
21 was that it was a BID drug as opposed to a once-a-day drug.

22 So, you know, we would -- or I would talk about how to,  
23 again, solicit unsolicited questions in order to get the  
24 once-a-day information in their hands.

25 Q. When you say "their hands," who are you talking about?

GRAHAM - DIRECT - RUSS

1 A. I'm sorry. The providers.

2 Q. So the idea is you ask or prompt the provider to ask you  
3 for off-label information?

4 A. Yes.

5 Q. Is that off-label promotion if you provide it?

6 A. I don't know that --

7 Q. Is that off-label marketing?

8 A. It is, yes.

9 Q. And you did that as a sales rep in New York?

10 A. Yes.

11 Q. Not for Intelence but for Prezista?

12 A. Yes.

13 Q. And then you --

14 A. I was in -- I was a trainer when Intelence was launched.

15 Q. Right.

16 A. Yes.

17 Q. And then you trained sales reps on off-label promotion  
18 while you're at the home office.

19 A. Yes.

20 Q. And then you went back to the field, right, in  
21 New Jersey?

22 A. Yes.

23 Q. And you sold both Prezista and Intelence?

24 A. That is correct.

25 Q. Did you continue to sell it to doctors off-label?

GRAHAM - DIRECT - RUSS

1 A. Yes. I mean, more so to me at that time in, like, 2009,  
2 you know, we had the treatment-naive indication for Prezista,  
3 so it was -- it was coming into its own, you know. But with  
4 Intelence, you know, it was -- it was a good drug. It wasn't  
5 a great drug, you know. But the barrier to writing more of it  
6 was because it was a BID drug, or a twice-a-day drug.

7 Q. Explain to the jury an example of how you would promote  
8 to a doctor how to use Intelence once a day rather than twice  
9 a day as approved by the label?

10 A. Yeah. So, you know, first of all, I would say, you know,  
11 wouldn't it be great if it were once a day. Yes. And the way  
12 that you can do that is with the -- with the Intelence  
13 capsules or tablets, you could drop them into water and  
14 dissolve them kind of like an Alka-Seltzer, and then what we  
15 would say is, you know, just dissolve it in the water, and  
16 then the patients can take their other HIV meds with this  
17 elixir, you know.

18 So it seems like the pill burden is less, because there  
19 were a lot of studies done on adherence for HIV patients, and  
20 it wasn't necessarily the pill burden. It was really more the  
21 number of times per day, because what the patient said is the  
22 more times they have to take HIV meds each day, that's --  
23 that's the more times they're reminded that they have HIV.  
24 Right? So when you're taking your meds, you're reminded that  
25 you have it.

GRAHAM - DIRECT - RUSS

1           So it was really important to the patients and, you  
2 know, ultimately the physicians that the products be once a  
3 day.

4 Q. And you sold it once a day?

5 A. Yes.

6 Q. Was it your idea?

7 A. No.

8 Q. Why did you do it?

9 A. I felt that I had to.

10 Q. Why?

11 A. Because I felt that my job was on the line.

12 Q. We talked about studies a minute ago.

13 A. Yes.

14 Q. Was it your experience at Janssen that you would use what  
15 were called off-label studies with physicians?

16 A. Yes.

17 Q. Describe to the jury some of the off-label studies that  
18 you would use, or the types of off-label studies.

19 A. You know, for example, we talked a lot about how you  
20 can't cross-compare Prezista to Reyataz. I mean, there was  
21 some independent studies done that actually did that. We  
22 would share those with the physicians. We would share, you  
23 know, very small publications. I mean, some of the studies  
24 were 50 patients, maybe 14 weeks. It was -- there were  
25 congresses or conferences a couple times a year that were

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1 specifically for HIV. And what we would do at Janssen is  
2 share all of those posters or those publications to the sales  
3 force.

4 So, you know, they would have them in their toolbox if  
5 they wanted to use them.

6 Q. Would you leave those studies behind to doctors?

7 A. No.

8 Q. Why not?

9 A. Because that's a paper trail.

10 Q. What do you mean by that?

11 A. I mean, if you left it behind, somebody could say, Hey,  
12 the Janssen rep left it here.

13 Q. What would have been your concern if somebody said, Hey,  
14 the Janssen rep left this study here?

15 A. Because that's illegal, and I didn't want to lose my job.

16 Q. Were you the only person doing this?

17 A. No.

18 Q. How do you know that?

19 A. I mean, reps talk, right. I mean, it was common practice  
20 throughout the country. Everybody felt, you know, under the  
21 gun to perform.

22 Q. When you say "perform," to make sales?

23 A. Yes.

24 Q. There's a notion out there, Ms. Graham, that doctors make  
25 their own independent judgment when it comes to prescribing.



GRAHAM - DIRECT - RUSS

1 Do you think that you can affect prescribers?

2 A. I do. I mean, sales reps wouldn't exist if we didn't  
3 have some influence over them.

4 Q. Was another way at Janssen that you got off-label  
5 information in the hands of prescribers through the use of  
6 something called a Medical Information Request or MIR?

7 A. Yes.

8 Q. What is an MIR?

9 A. So it's something that we would have the physicians sign  
10 if they wanted information that was out of the package insert.

11 Q. So explain how the process is supposed to work with the  
12 Medical Information Request.

13 A. So it is supposed to be in response to an unsolicited  
14 request. We would write down the question on the Medical  
15 Information Request form. We would have the physician or the  
16 provider sign it. It would be faxed in or sent in when it was  
17 on the iPad to our medical department, and the medical  
18 department would then send them the response.

19 Q. Did you become familiar with MIRs before your time at  
20 Janssen?

21 A. I mean, yes. It's commonplace in pharmaceutical  
22 companies.

23 Q. Was there a difference in your time at Janssen as to the  
24 Medical Information Request than from any other company that  
25 you had been in?

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1 A. Very much so.

2 Q. How so?

3 A. Because we were being tracked as to how many Medical  
4 Information Request forms we were sending on a weekly basis.

5 I mean, I can only compare it to -- I mean, I sell a  
6 drug for a rare kidney disease right now, and it's a drug  
7 that's new to class, and I maybe send in three Medical  
8 Information Request forms a month.

9 MR. RUSS: If we could, Ms. Johnson, pull up, just  
10 for the witness and opposing counsel, RX 73, please.

11 BY MR. RUSS:

12 Q. Ms. Graham, do you recognize Relators' 73?

13 A. I do.

14 Q. What is it?

15 A. This is an email that was sent out to our district.

16 MR. RUSS: Your Honor, there's no objection to this  
17 document. We move to admit RX 73.

18 THE COURT: Ms. Brown?

19 MS. BROWN: No objection, Your Honor.

20 THE COURT: All right. So admitted.

21 (Plaintiff's Exhibit RX 73 in evidence.)

22 MR. RUSS: If we could publish to the jury, please,  
23 Ms. Johnson.

24 BY MR. RUSS:

25 Q. Ms. Graham, again, who was Frank Murphy?

GRAHAM - DIRECT - RUSS

1 A. He was my district manager, my direct manager.

2 Q. Okay. I know we're jumping around a little bit at a  
3 time --

4 A. That's okay.

5 Q. -- right, but I'm trying to stay on top of it.

6 A. Sure, that's fine.

7 Q. We're back in 2007, and you're a sales rep in New York.

8 A. In Man- -- yes.

9 Q. So Frank Murphy was your boss.

10 A. Yes.

11 Q. Describe, if you would, some of the people that this  
12 email was sent to. Do you know who those people are?

13 A. I do.

14 So it was mostly everyone -- it was everyone in my  
15 district, all the other sales reps. It was Nancy Bartnett,  
16 who was -- whatever her title was. Eric Sherr, who was the  
17 access and reimbursement person. And Michael Valentine, who  
18 was the community liaison person. So community liaisons went  
19 and spoke to patients directly. They had the ability to do  
20 that.

21 Q. Now, we talked earlier that you knew my client,  
22 Ms. Penelow, from your time at BMS.

23 A. Yes.

24 Q. And Ms. Penelow joined you eventually at Janssen.

25 A. That is correct.

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1 Q. She was a sales rep with you in New York?

2 A. That is correct.

3 Q. Her name at the time, Jessica Finkelstein?

4 A. Yes.

5 Q. And then you also during that time period met my client,  
6 Christine Brancaccio?

7 A. That is correct.

8 Q. Did you also sell with her in the New York district?

9 A. I did.

10 Q. Okay. And they're listed there on this email.

11 A. They are.

12 Q. You see Mr. Murphy is sending a use of resources.

13 MR. RUSS: And I want to blow this up for the jury  
14 even more if we can, Ms. Johnson.

15 BY MR. RUSS:

16 Q. I'll start from the beginning. It says, "New York team."

17 Do you see that?

18 A. Yes.

19 Q. If you could read the first sentence of this email.

20 A. "New York team. I know that we have discussed what other  
21 districts are doing to drive business and share best  
22 practices."

23 Q. So this is an email comparing your district to other  
24 districts?

25 A. Yes.

GRAHAM - DIRECT - RUSS

1 Q. And discussing best practices in driving business?

2 A. Correct.

3 Q. Please continue.

4 A. "We are always comparing ourselves to the Florida  
5 district, wondering how and projecting what they are doing  
6 differently than us to move the Prezista business."

7 Continue?

8 Q. Yes, please.

9 A. "I think we all believe we are doing the same job as  
10 those in Florida, but I have to disagree. As we have  
11 discussed in the past, we need to use the MIR process to  
12 answer unsolicited questions on Prezista that are off-label."

13 Q. Let me stop you there.

14 Is Mr. Murphy describing a problem where the doctors  
15 are asking for off-label information but your team is just not  
16 doing the MIR request?

17 A. It appears that way.

18 Q. All right. We can keep going. You can see -- you can  
19 see the whole email.

20 A. Yeah. "All of those requests are logged in and accounted  
21 for by state and by district. For the month of January, we  
22 had 49 requests logged in to Florida's 50, but in February, we  
23 had 60 requests compared to Florida's 154.

24 "We are a district of nine salespeople versus seven,  
25 and they are outperforming us. If you break down the numbers,

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1 we are averaging 1.5 Medical Information Request forms per  
2 territory per week.

3 "That is not what I expect and want all of your  
4 commitments to use this resource when asked by your customers.  
5 Prezista is a great drug, and we owe it to our patients and  
6 yourselves to get the message out about it.

7 "I don't want to end the week on a negative note but  
8 feel that we are going to be viewed as the best sales district  
9 in the country. We better start to pick up the pace and  
10 control these situations."

11 Q. Okay. Let's break that down.

12 This is an email about driving business, right?

13 A. Yes.

14 Q. And MIRs, in your experience, deal with off-label  
15 information?

16 A. Yes.

17 Q. As you just testified -- that they are supposed to be  
18 unsolicited?

19 A. Yes.

20 Q. Did you solicit MIRs?

21 A. Yes.

22 Q. How so?

23 A. I gave an example earlier, but I'll give another one.

24 Wouldn't it be great if you had some information about  
25 how you could use this in a treatment-naive patient?

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1 Q. Was Mr. Murphy breaking down the number of MIRs for  
2 comparing to other districts?

3 A. Yes. The whole country was.

4 Q. And he said, "We better start to pick up the pace and  
5 control these situations."

6 A. Yes.

7 Q. How do you control a situation that's supposed to be  
8 unsolicited and spontaneous?

9 A. That's a great question. I don't think that you can.

10 Q. So what did you do?

11 A. We started sending in forged Medical Information Request  
12 forms, and if -- I would say to the doctor, for example, you  
13 know, do you -- wouldn't it be great to have some information  
14 in using it in treatment-naive patients? Yes. Wouldn't it be  
15 great if you had some more resistance data? Yes.

16 So instead of putting that on one form, which is, you  
17 know, generally how it's done, everybody was creating like  
18 only one question per one form because then it would drive the  
19 number of Medical Information Request forms being sent in.

20 Q. Okay. And let's explain to the jury what happens when  
21 you submit one of these MIRs to Janssen.

22 A. Yes. So, you know, it would get sent in either via fax  
23 or through the iPad. I don't think we had the iPads at the  
24 time, so through the fax.

25 It would be sent to Janssen's medical department, and

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1 then the medical department would send out the response with  
2 the information to the provider.

3 Q. So the off-label information that's being requested in  
4 MIR is sent directly to the provider?

5 A. That is correct.

6 Q. And you said that they were forged?

7 A. Some of them, yes.

8 Q. And so that would result in off-label information being  
9 sent directly to a provider who didn't even request it?

10 A. That is correct.

11 Q. And how -- you saw that?

12 A. Yes.

13 Q. You did?

14 A. I did.

15 Q. You know other people did?

16 A. I did.

17 Q. And you were actually being told by your boss to pick up  
18 the pace and that these were metrics that he was watching?

19 A. That is correct.

20 Q. Is that why you did it?

21 A. Yes.

22 Q. When you were a sales rep, did you get paid more for more  
23 sales?

24 A. Yes. Well, you get bonus.

25 Q. Explain to the jury what a bonus for a sales



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1 representative --

2 A. So you would make a -- you make a salary, but at the end  
3 of each quarter, based upon your performance or whether you  
4 met your goal or if you exceeded your goal, you would be paid  
5 a certain amount as a bonus.

6 Q. On the MIR requests and submitting them when they weren't  
7 requested, was that your idea?

8 A. No.

9 Q. Were other people doing it?

10 A. Yes. And I didn't feel good about it.

11 Q. At the time?

12 A. I still don't feel good about it, and I've never done  
13 that at any other pharmaceutical company that I've worked for.

14 Q. Let me go back, and I want to transition back to the  
15 speaker program for a second because I'm trying to work  
16 through your chronology at the company.

17 A. Okay. Sure.

18 Q. You mentioned a couple prescribers that you had submitted  
19 as a sales rep, right?

20 A. Yes.

21 Q. And they became speakers?

22 A. Yes.

23 Q. Describe for the jury -- well, first of all, what is a  
24 speaker program?

25 A. A speaker program is an event held at a restaurant where

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1 you have a physician come in and address their peers, whether  
2 it would be other physicians or nurse practitioners or, you  
3 know, physician assistants go over a slide deck. The speaker  
4 would be paid an honorarium, and it was an event in order to  
5 create awareness about the product.

6 Q. What is honorarium?

7 A. It's -- it's paid -- you know, it's a -- it's a check  
8 essentially to pay -- to pay the physician for their time to  
9 speak.

10 Q. Some of the prescribers that you mentioned earlier that  
11 we were looking at the top prescribers in New York, they  
12 became speakers --

13 A. Yes.

14 Q. -- right? They wrote prescriptions for Prezista?

15 A. Yes.

16 Q. Did some of your doctors also write prescriptions for  
17 Intelence?

18 A. Well, I was not in New York in Intel- -- but, yes, in  
19 New Jersey, yes. Yes. I'm sorry. Yes. Okay.

20 Q. Did you also recommend speakers in New Jersey?

21 A. I'm sure I did. It may have already been established  
22 because, you know, at that point, Prezista and Intelence were  
23 actually out on the market already. We weren't launching  
24 them.

25 So I don't remember submitting too many names in

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1 New Jersey. You know, the speakers that I felt that the  
2 previous rep had recruited or, you know, submitted were  
3 adequate or they were good.

4 So I don't remember specifically adding anybody in  
5 New Jersey.

6 Q. Did you personally attend some of these speaker events?

7 A. All of them. I mean, any one that I coordinated, yes.

8 Q. So dozens and dozens of them?

9 A. Yes.

10 Q. Were they oftentimes or -- at nice restaurants?

11 A. Yes.

12 Q. Were there times that you have what was called a  
13 roundtable?

14 A. Sometimes, yes.

15 Q. What was a roundtable?

16 A. A roundtable was a little less formal. So instead of  
17 being in, like, a private room with, you know, a screen, it  
18 would be maybe the speaker and two or three other doctors at a  
19 roundtable with a laptop looking at slides.

20 Q. And the doctor who was looking at the slides or  
21 presenting them would be paid by Janssen?

22 A. Yes.

23 Q. On those roundtables, would there be just a handful of  
24 people around the table?

25 A. Yeah. I mean, you didn't want it too big, right, because

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1 you're in a restaurant. You're not in a private room, so you  
2 want to be able to hear. So it was generally not more than  
3 five people.

4 Q. Did Janssen pay for those meals?

5 A. Yes.

6 Q. Was there alcohol at those meals?

7 A. At that time, I believe that there was. You can't do it  
8 today, but I think at that time, that was still allowable.

9 Q. I'm glad you brought that up. At some point in your time  
10 as a sales rep back in the 2005 time period, did you learn  
11 that the Government was cracking down on providing things of  
12 value to physicians?

13 A. Yes.

14 Q. Describe to the jury what you learned in your experience.

15 A. So they instituted something called the Sunshine Act  
16 where you couldn't give them any pens or any pads that had the  
17 drug's name on it.

18 You know, way back in the day, we would send doctors to  
19 like an ad board that would be at, you know, the Phoenician in  
20 Scottsdale, a very expensive restaurant, where they golfed,  
21 and they would have maybe an hour or two of meetings in the  
22 morning but then had the rest of the day off.

23 They would fly them first class. They could bring  
24 their wife or their spouse or their partner. I mean, yeah, it  
25 was pretty excessive.

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1 Q. The Government began cracking down on them?

2 A. Yes.

3 Q. You mentioned that you believe one of the purposes of  
4 selecting a speaker for Janssen was to get the doctors to  
5 prescribe Prezista.

6 A. Yes.

7 Q. Same for Intelence?

8 A. Yes.

9 Q. Was it also designed to give them more speeches to reward  
10 them for their prescriptions?

11 A. Yes.

12 Q. Did Janssen track what's called an ROI?

13 A. Yes.

14 Q. What does that mean?

15 A. It's return on investment.

16 Q. Was that an important metric?

17 A. Yes. So what we would do is when physicians would attend  
18 a speaker program, we would then closely monitor the  
19 prescription volume of the physicians that attended these  
20 speaker programs or dinner programs or roundtables.

21 Q. And you also mentioned earlier that you had the data to  
22 monitor the prescriptions of the speakers.

23 A. Yeah. I mean, yeah, we could track -- yes, yes.

24 Q. Did you personally monitor some of the prescription  
25 volume of your speakers?

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1 A. Well, yes. Like I think I mentioned before, we got  
2 prescribing data I think weekly. I don't remember. We  
3 don't -- I don't get it anymore because the drug that I sell  
4 now is not prescribed by a prescription. It's a different  
5 process.

6 But, yeah, I think we got them weekly but, you know,  
7 frequently enough that you were able to track what was going  
8 on and how you were influencing or how, you know, messages  
9 were influencing the providers.

10 Q. Were there times that you had prescribers that you  
11 recommended that weren't prescribing Prezista that were on the  
12 speaker bureau?

13 A. Yes.

14 Q. And what would happen?

15 A. If they weren't writing, we were told that we had to take  
16 them off of the speaker program or the speaker bureau.

17 Q. You said, "We were told."

18 Who told you that?

19 A. Frank Murphy.

20 Q. Is there a specific example that you can tell this jury?

21 A. Yes. With one of my providers, Lloyd Bailey, you know,  
22 it was an ongoing conversation with Frank where he would say,  
23 you know, Lloyd isn't writing.

24 Yes. I'm painfully aware that he's not writing.

25 And Frank would say, You're going to have to take him

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1 off the speaker bureau.

2 And I would say, Yeah, you know, just give me -- let  
3 me -- give me a little more time, and, you know, after a month  
4 or a month and a half, he's like, He's got to go.

5 So I had to go in and have the conversation with Lloyd  
6 and tell him why he was being taken off the speaker bureau.

7 Q. What was that reason?

8 A. Because he wasn't writing.

9 Q. When you say "writing," writing prescriptions?

10 A. Right, he was not writing for Prezista.

11 Q. So he wasn't prescribing Prezista to his patients?

12 A. Correct.

13 Q. So he wasn't going to be a speaker anymore?

14 A. Correct.

15 Q. And he wouldn't be paid anymore by Janssen?

16 A. That is correct.

17 Q. Did Janssen have a compliance department?

18 A. Yes.

19 Q. At these speaker programs, did you ever see anyone from  
20 compliance attend?

21 A. Never.

22 Q. Ms. Graham, is it high-risk activity to pay speakers that  
23 are also prescribing your drug?

24 A. Is it a high risk?

25 Q. Let me ask it this way: Is it regulated?

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1 A. Yes.

2 Q. And compliance had policies about what was supposed to  
3 happen at these speaker events?

4 A. Yes.

5 Q. And you don't recall if compliance ever attended?

6 A. Never. And I was kind of in their backyard. So if they  
7 were going to attend speaker programs, I mean, they could have  
8 chosen my territory, particularly when I was in New Jersey, to  
9 do so.

10 Q. Was another criteria for being on the speaker bureau a  
11 willingness to speak off-label?

12 A. Yes.

13 Q. Explain that to the jury.

14 MS. BROWN: Your Honor, I'm just going to object to  
15 this line of questioning as calling for speculation.

16 THE COURT: Sidebar.  
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1 (Sidebar begins at 2:51 p.m.)

2 THE COURT: Let me say something first, Ms. Brown. I  
3 was going to wait for the break because I don't want to say  
4 something in front of the jury.

5 But in this district, you stand when you speak.

6 MS. BROWN: Oh, I apologize, Your Honor.

7 THE COURT: You've done it numerous times.

8 MS. BROWN: Oh, I apologize.

9 THE COURT: Every objection that you've said "no  
10 objection," you've sat.

11 MS. BROWN: I apologize.

12 THE COURT: You're doing it now. So I just didn't  
13 want to say it in front of the jury.

14 MS. BROWN: I'm sorry, Your Honor. I don't mean to  
15 be disrespectful. I apologize.

16 THE COURT: No, no, I get it, and every district is  
17 different. Like, I think in EDPA, they don't care. In our  
18 district, I've practiced in this court for many years. So I'm  
19 just going to remind you.

20 Okay. Now --

21 MS. BROWN: Thank you, Your Honor. And I apologize.

22 THE COURT: That's all right.

23 MS. BROWN: So we filed a motion in limine on this,  
24 Your Honor, and you said you would reserve it for the time of  
25 trial.

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1 She was not involved in the selection for the speaker  
2 bureau, and the testimony has kind of gone beyond what she  
3 knew about doctors that she worked with.

4 And she's now testifying about how speakers were  
5 selected. She has no personal knowledge of that --

6 THE COURT: What's the question? Let me just look at  
7 the -- I've got to look at my feed.

8 All right. So the question was "Was another criteria  
9 for the speaker bureau..."

10 Mr. Russ, my understanding is that she makes  
11 recommendations but does not choose the speakers, correct?

12 MR. RUSS: That's right.

13 THE COURT: So then how is she testifying to this  
14 other than through hearsay, somebody telling her what --

15 MR. RUSS: For her recommendations is what I was  
16 intending to elicit. One of the recommendations that she  
17 would select because her --

18 THE COURT: Oh, what is she -- what is her criteria  
19 for recommending a speaker?

20 MR. RUSS: That's right.

21 THE COURT: Well, then form the question that way.

22 MS. BROWN: Okay.

23 THE COURT: So I agree with you, by the way. So  
24 here's -- I'm just going to make this ruling now, and then  
25 I'll monitor -- I'll mind it if there's an objection in real

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1 time at sidebar.

2 But if you asked her about what her criteria is for her  
3 personally recommending, she can answer that. If you ask what  
4 is the criteria for being selected as a speaker, she's  
5 testified that she doesn't select the speakers.

6 MR. RUSS: Understood.

7 THE COURT: No, that question is not clear. I'm  
8 going to ask you to rephrase it. Stay in that lane.

9 Your objection is sustained.

10 You'll rephrase the question, but I'm just letting you  
11 know, I'll allow him to ask what her criteria is for  
12 recommending a speaker.

13 MS. BROWN: I understand.

14 Your Honor, just so -- when we object, do you want the  
15 basis from out there, or do you want us to just say  
16 "objection" and come up?

17 THE COURT: No, no. I don't mind just the objection  
18 and the basis.

19 MS. BROWN: Okay. But I have to stand up.

20 THE COURT: But you have to stand. And also, once  
21 you get passed one or two words, you're going beyond the  
22 basis. But, yeah, if you can just say "hearsay, objection,  
23 beyond the scope," I might address it on the bench, but I  
24 might have a sidebar.

25 This is why I wanted a sidebar, because I needed to

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1 know exactly what the objection was and I didn't want to do  
2 too much in front of the jury.

3 MS. BROWN: Thank you.

4 THE COURT: But a lot of times, I can address it on  
5 the bench. All right. Thank you.

6 MS. BROWN: Thank you.

7 (Sidebar was concluded at 2:54 p.m.)

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1 (Open court.)

2 THE COURT: All right. Mr. Russ, the objection is  
3 sustained. I'm going to just ask you to rephrase the  
4 question.

5 BY MR. RUSS:

6 Q. Ms. Graham, did some of the speakers on your speaker  
7 bureau presentation speak off-label?

8 A. Yes.

9 Q. And explain the process for the slide deck preparation  
10 for these physicians who are speaking about these drugs.

11 A. Sure. So there was -- the initial set of slides or the  
12 first set of slides that they would present were all on-label  
13 within the package insert, and then there was, you know,  
14 backup slides that were utilized in order to answer off-label  
15 questions.

16 Q. Would some speakers speak off-label on their own?

17 A. Yes.

18 Q. Were there other ways that you at Janssen and other  
19 people at Janssen prompted physicians at these speaker events  
20 to speak off-label?

21 A. Yes.

22 Q. What was that?

23 A. We would have plants in the audience.

24 Q. Describe what a plant in the audience means.

25 A. So before the program happened, you know, we would talk

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1 to one of the providers or a PA or MP or somebody that was  
2 attending the program to ask an -- ask an off-label question.

3 Q. Did you personally arrange for plants at these speaker  
4 events?

5 A. A few times, yes.

6 Q. And how would that -- how would that unfold?

7 A. So generally, at the end, after we've gotten through the  
8 approved slide deck, the speaker would say, Does anybody have  
9 any questions or what questions can I answer?

10 And then that's when the plant would stand up and ask a  
11 question that then directed the conversation to an off-label  
12 conversation.

13 Q. So at the dozens and dozens of speaker events that you  
14 went to, did the on-label slides that were approved change  
15 very much?

16 A. Not -- not too much. I mean, when the label changed,  
17 they would change, but generally not.

18 Q. What about the backed up off-label slides?

19 A. Yes. They -- they changed as more information or more  
20 data was gathered.

21 Q. Why were you putting plants in the audience to solicit  
22 off-label discussion from a paid doctor?

23 A. Because that's the information that we wanted them to  
24 have.

25 Q. Why?

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1 A. Because that was how we were going to increase sales.

2 Q. And how would that increase sales?

3 A. Because the hope was that it would, you know, influence  
4 on some level for them to prescribe the product or think of a  
5 new way to use it or in an new patient type.

6 Q. Were you the only person at Janssen that put plants in  
7 the audience at speaker events?

8 A. No.

9 Q. Was it your idea?

10 A. No.

11 Q. Did you talk to other sales reps that were doing the same  
12 thing?

13 A. Yes.

14 Q. And what did you guys discuss about why you were doing  
15 it?

16 A. We knew why we were doing it. It was to get, you know,  
17 off-label information presented at these speaker programs. We  
18 couldn't rely on it happening organically.

19 Q. Is that similar to the MIR request process that you  
20 talked about earlier?

21 A. Yeah. There's a similarity there, yes.

22 Q. Soliciting something that's supposed to be spontaneous?

23 A. Yes.

24 Q. Is it fair to say that's gaining the system?

25 A. Yes.

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1 Q. Were there program evaluations from these speaker events?

2 A. Yes.

3 Q. And who was supposed to fill those out?

4 A. Myself. Generally, the key account manager was there as  
5 well who was the one that worked with the speakers and trained  
6 the speakers and then the attendees.

7 Q. And there was -- was there a question on those speaker  
8 evaluations of whether or not the speaker discussed off-label  
9 information?

10 A. Yes.

11 Q. Would you fill it out?

12 A. Yes.

13 Q. Would you fill out truthfully?

14 A. No.

15 Q. What would you say?

16 A. That they didn't speak off-label.

17 Q. And why did you do that?

18 A. Because that's what we were told to do.

19 Q. Who told you to do that?

20 A. You know, everything was about the appearance of  
21 everything being on the up and up, right? So, you know,  
22 checking that there was off-label information presented could  
23 cause a red flag.

24 I mean, you know, that's -- that's not fair. I mean,  
25 physicians can speak to their peers about information that's



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1 off-label. It's just not supposed to be, you know, solicited  
2 from us.

3 Q. Were you concerned that somebody would find out that this  
4 off-label information was being solicited?

5 A. Yes.

6 Q. Were you concerned that your bosses were going to find  
7 that out?

8 A. No.

9 Q. Why not?

10 A. Because -- I mean, that's what we were expected to do.

11 Q. Were you concerned that somebody would find out?

12 A. I was -- yes. The Government.

13 Q. The United States Government?

14 A. Yes. The FDA.

15 Q. Why were you concerned the Government would find that  
16 out?

17 A. Because there could be a lot of sanctions against the  
18 company. I could lose my job. You know, they could have the  
19 drug pulled. I mean, there was a lot of ramifications of  
20 speaking off-label.

21 Q. I want to turn --

22 MR. RUSS: And, Your Honor, I want to be respectful,  
23 if we need a quick break.

24 THE COURT: I was about to say, we're about to hit 3  
25 o'clock, but I don't know where you are in the direct. Is

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1 this a good place to stop, or do you have a very short amount  
2 left? I just don't know.

3 MR. RUSS: It is, Your Honor. I probably have about  
4 30 minutes left.

5 THE COURT: Then I'd like to do the -- is this a good  
6 place to break?

7 MR. RUSS: It is, Your Honor.

8 THE COURT: Folks, we're going to take a ten-minute  
9 break. Stretch, restroom, whatever you need to do, and even  
10 if you need a few more minutes, I'll allow. But I'm going to  
11 have the jurors dictate that.

12 All right. We're dismissed for ten minutes.

13 THE DEPUTY COURT CLERK: All rise.

14 (A short recess occurred.)

15 THE DEPUTY COURT CLERK: All rise.

16 THE COURT: All right, folks. You may be seated.  
17 Do we need to talk about anything before we get the  
18 jurors?

19 MR. RUSS: No, Your Honor. I just want to clarify,  
20 for cleaning purposes, going back through my outline, it may  
21 push beyond 30 minutes, and we'll try to move quickly through  
22 the notes --

23 THE COURT: Yeah, I wasn't rushing you. It was more  
24 about when do I get this break for the jurors and everybody  
25 else that might need it. So if you -- but you think you're

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1 going be done in the next, what?

2 MR. RUSS: We're still trying to scoot -- is it a 4  
3 o'clock break? because I want to try to move to, you know --

4 THE COURT: I mean, I'm flexible. I mean, we're  
5 beginning cross, right? I don't know how long the cross is  
6 going to be, but, yeah. Why don't we finish the direct, and  
7 then we'll see how much time we have left in the day. I'd  
8 like to begin cross-examination, but I don't know.

9 If we can finish with the witness, let's finish. I'm  
10 not hard on 4 o'clock. If we can finish Ms. Graham by 4:15 or  
11 4:30, I'll do it, but I don't know.

12 MS. BROWN: Your Honor, my cross will be longer than  
13 30 minutes.

14 THE COURT: All right. So we'll see where we are.

15 MR. RUSS: Okay.

16 THE COURT: All right. Let's get the jurors out.  
17 We'll see where we end on direct, and we may begin the cross  
18 and not finish it.

19 THE DEPUTY COURT CLERK: All rise.

20 THE COURT: Folks, everyone be seated.

21 And, Mr. Russ, when you're ready, you can continue with  
22 direct examination.

23 MR. RUSS: Thank you, Your Honor.

24 BY MR. RUSS:

25 Q. Ms. Graham, we left off talking about the speaker program

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1 evaluations?

2 A. Yes.

3 Q. Were there also events at Janssen called advisory boards?

4 A. Yes.

5 Q. What were those?

6 A. They were -- you know, physicians would be invited to  
7 attend an advisory board to hear, you know, medical and  
8 marketing talk or messages and the dissemination of off-label  
9 information.

10 Q. Describe a little bit more for the jury what that looked  
11 like. What were these advisory boards? Where were they?

12 A. You know, that were at various places throughout the  
13 country. Generally at very nice hotels. Sometimes over a  
14 weekend. So it was, you know, a chance for the providers to  
15 interact, again, like I said, with the marketing team as well  
16 as the medical team.

17 Q. Would the physicians receive an honoraria or a payment  
18 for that service?

19 A. Yes.

20 Q. Or for that trip?

21 A. Yes.

22 Q. Would the trip be paid for by Janssen?

23 A. Yes.

24 Q. Was the food covered by Janssen?

25 A. Yes.

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1 Q. Can you give the jury some examples of some locations  
2 that these advisory boards would be held?

3 A. I mean, I don't remember specific hotels. I myself, I  
4 think, only attended one, and I believe it was in Chicago.

5 Q. Okay. Were speakers accommodated as far as where they  
6 wanted to travel to to speak at times?

7 A. At times, yes.

8 Q. Explain to the jury what would happen there.

9 A. You know, if a speaker was traveling to, say, you know,  
10 Florida they would say, you know, Can you get me a couple of  
11 other speaking programs while I'm there. Or, you know, Hey,  
12 my kid goes to Harvard. Can I talk up in Boston.

13 You know, yes, we tried to accommodate them.

14 Q. Was it accommodated by Janssen?

15 A. For the most -- I don't know of a time that it wasn't.  
16 I'm sure there may have been a time or two that it didn't work  
17 out, but I don't remember -- I remember it working out much  
18 more frequently than not.

19 Q. And so that was a situation where a doctor would actually  
20 tell Janssen, Find me another speaker program?

21 A. Yeah. I mean, because of the fact that, you know,  
22 they're leaving their practice. They're leaving home.  
23 They're traveling. If they're traveling on a plane for more  
24 then a few hours, they want to make it worth their while to do  
25 so, not just for one program.

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1 Q. So in those instances where that occurred, was there a  
2 needs assessment done by the company to say, Actually, we need  
3 two, or is it the doctor prompting another event?

4 A. I mean, it was the doctor prompting the event, and then  
5 we would try and accommodate them.

6 Q. And then Janssen would pay that doctor.

7 A. Correct. I mean, sometimes at a reduced honoraria,  
8 right, if there's multiple programs.

9 Q. But the doctor would get paid.

10 A. Yes.

11 Q. Was there something at Janssen called a CRM system?

12 A. Yes.

13 Q. What was that?

14 A. That's the customer management system where, you know,  
15 all of the doctors and providers that we called on were logged  
16 into that. And then, you know, we were responsible for  
17 talking about -- or checking off that we spent time with them  
18 that day.

19 Q. So I want to make sure that this is clear for the jury.

20 A. Sure.

21 Q. I'm not sure I understood it when I came into this case.

22 A. Yeah.

23 Q. When you call upon a doctor --

24 A. Yes.

25 Q. -- not a phone call.

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- 1 A. No, face to face.
- 2 Q. Face-to-face visit?
- 3 A. Yes.
- 4 Q. Was the CRM system designed to keep notes on that visit?
- 5 A. Yes.
- 6 Q. Would you keep your notes?
- 7 A. No.
- 8 Q. Why not?
- 9 A. We were told not to keep notes.
- 10 Q. Who told you that?
- 11 A. I don't remember specifically. It was just a well-known
- 12 thing not to keep notes. And when I was a sales trainer, I
- 13 had to tell the reps not to put notes in the CRM system.
- 14 Q. Was that your idea?
- 15 A. No.
- 16 Q. Whose idea was it?
- 17 A. I don't specifically remember. I mean, it was -- I
- 18 remember it being discussed that that was what we did. We did
- 19 not put notes in the CRM system.
- 20 Q. Were you instructed to sale -- to instruct and train
- 21 salespeople on that practice?
- 22 A. Yes.
- 23 Q. Did you do that?
- 24 A. Yes.
- 25 Q. And why?

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1 A. Because if we engaged in an off-label conversation, we  
2 didn't want any paper trail of that happening. So, you know,  
3 putting in off-label notes in the CRM system, you know, was  
4 not good.

5 Q. Was not good why?

6 A. Well, again, because, you know, if the Government or the  
7 FDA were to find out that we, as sales reps, were having  
8 conversations that were off-label and were documenting it, I  
9 mean, that is -- that's a red flag.

10 Q. There was an insinuation made by Janssen that you were --  
11 salespeople were doing this and trying to hide it from the  
12 company.

13 A. That's not correct.

14 Q. What is correct?

15 A. We were doing it because essentially we -- it was  
16 understood not to do it because we were protecting essentially  
17 not only ourselves but the organization by not putting them in  
18 there.

19 Q. Did compliance ever come to you and say, You're not  
20 filling out your notes?

21 A. No.

22 Q. How long were you at Janssen?

23 A. Five years.

24 Q. You sold for what, four?

25 A. Yes. No, two. Three. Three.



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1 Q. Three?

2 A. Yeah. Sorry.

3 Q. Do you recall any instance where compliance visited you  
4 and said, You're not filling out your notes from your meetings  
5 with these doctors?

6 A. No.

7 Nor was it ever addressed on a national level. I mean,  
8 it was never at a POA meeting; it was never addressed. But --  
9 I mean, it was never talked about that we were not putting  
10 notes in there.

11 Q. I'm glad you brought that up. There are different types  
12 of meetings. What's a POA meeting?

13 A. That's a plan of action meeting, and they occurred  
14 generally every quarter. Sometimes they were national, where  
15 everybody got together in one location. Sometimes -- and that  
16 definitely happened once a year. Sometimes it happened twice  
17 a year.

18 If we didn't get together as a nation, perhaps we got  
19 together as a region. And sometimes we just got together as a  
20 district.

21 Q. Ms. Graham, I suspect that Janssen will show you some  
22 compliance policies from your time at Janssen.

23 Do you recall there were policies written by  
24 compliance?

25 A. Yes.

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1 Q. Did you follow those policies?

2 A. No.

3 Q. Was it a widespread practice from the people that you  
4 knew and talked to that they were not being followed?

5 A. Yes.

6 Q. Did you come up with a business plan not to follow those  
7 policies?

8 A. No.

9 Q. Who did?

10 A. I mean, again, it was understood. It was -- I can't  
11 pinpoint one person. It was just a general culture at  
12 Janssen.

13 Q. What was the culture like at Janssen?

14 A. It was not particularly pleasant, you know, because,  
15 particularly at the beginning, we were so far behind goal that  
16 the president would yell at us on conference calls. He would  
17 yell at us at the national sales meeting. You know, it was a  
18 very high-stress environment. Just not good.

19 Q. But you had been in high-stress environments before.

20 A. Yeah, but not like that.

21 Q. Why was it different?

22 A. Because I was never expected to promote off-label.

23 Q. Were you expected to promote off-label at Bristol-Myers?

24 A. No.

25 Q. Any of your jobs since?

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1 A. No.

2 Q. Ms. Graham, the compliance had a hotline.

3 A. Yes.

4 Q. Did you call the hotline?

5 A. No.

6 Q. Why not?

7 A. I didn't feel that it was a safe environment.

8 Q. Why?

9 A. I know that they, you know, touted it as being anonymous,  
10 but none of us ever thought that it was truly anonymous.

11 Q. When you say "none of us," who are you referring to?

12 A. I mean, the entire sales force. You know, I don't think  
13 that anybody had any confidence in the fact that it was  
14 anonymous.

15 Q. Was there another part of the Janssen culture that had to  
16 do with something called performance improvement plans?

17 A. Yes.

18 Q. Also sometimes referred to as P-I-P or a PIP?

19 A. That is correct.

20 Q. What is a PIP?

21 A. It is a performance improvement plan where if somebody  
22 isn't, you know, meeting goal consistently, or, you know, not  
23 meeting certain metrics, then you were put on a performance  
24 improvement plan.

25 It's like a warning, you know, I mean, essentially.

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1 Q. Was that a common practice at Janssen?

2 A. Very much so.

3 Q. Do you know of other people that were put on performance  
4 improvement plans?

5 A. Multiple.

6 Q. Multiple salespeople?

7 A. Salespeople, regional directors, directors.

8 And then the other thing that was a pandemic and very  
9 widespread there was people going out on medical leave because  
10 they were on performance improvement plans. So people would  
11 then, you know, go on medical leave.

12 Q. Did you hear of anybody put on a performance improvement  
13 plan for selling off-label?

14 A. Never.

15 Q. Or not being compliant with the company's policies?

16 A. No.

17 Q. What were the performance improvement plans focused on?

18 A. Not meeting goal, not meeting whatever metrics at the  
19 time were supposed to be met.

20 Q. And those were goals for Prezista and Intelence?

21 A. Correct.

22 Q. Both of which had, I think you said, a limited  
23 indication.

24 A. Yes. For a period of time with Prezista.

25 Q. Well, Prezista for the treatment-naive --

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1 A. Yes.

2 Q. -- segment, right?

3 A. Right, exactly.

4 Q. Did the label ever change to take out the warnings or  
5 adverse reactions on Prezista for hyperlipidemia or  
6 hypercholesterolemia?

7 A. No. And if I remember correctly, the original label, it  
8 was listed as an adverse event. But by the time we got the  
9 naive indication, it was then listed as a serious adverse  
10 event.

11 Q. So it started as an adverse event and moved up to serious  
12 adverse event?

13 A. It did.

14 Q. Did you continue to sell Prezista as lipid neutral or the  
15 same as Reyataz on lipids?

16 A. Yes.

17 Q. And once Prezista got approved for treatment of naive  
18 patients in November 2008, did you sell Prezista off-label as  
19 the same as Reyataz --

20 A. Yes.

21 Q. -- on lipids?

22 A. Yes.

23 Q. Was that true?

24 A. No.

25 Q. Why did you do it?

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1 A. Because I didn't feel like I had a choice.

2 Q. Why did you feel that way? Explain that to the jury.

3 A. Well, because the treatment-naive group was the largest  
4 population or, you know, significantly -- a significant  
5 population. And Reyataz really had the majority of the market  
6 share for treatment-naive patients.

7 So, you know, that was a way for us kind of compare  
8 ourselves and put us on par with Reyataz.

9 Q. When you were -- did you like Bristol-Myers?

10 A. I did.

11 Q. Was it a good company?

12 A. Very much so.

13 Q. Did you not keep your call notes at BMS?

14 A. I'm sorry. Say it again?

15 Q. Did you not keep call notes while you were at BMS?

16 A. We did. I mean, it's so long ago, you know -- yes, I  
17 think we did keep call notes at BMS.

18 Q. Were there other things that you witnessed at Janssen  
19 that were different from your other positions in the  
20 pharmaceutical industry?

21 A. Yes.

22 Q. Explain that to the jury.

23 A. I never felt the stress or the pressure to promote  
24 off-label in any other company that I've ever worked for. And  
25 the environment, I've never been in an environment where

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1 people -- so many people were on performance improvement plans  
2 and people were out on medical leave. I have never seen  
3 anything like that.

4 Q. Help us understand, Ms. Graham -- I think it's  
5 important -- when you first started having concerns about  
6 these practices.

7 A. When did I first start?

8 Q. Yes, ma'am.

9 A. I mean, probably from the get-go. When we were not  
10 making goal and the strategy was to move the drug up -- try  
11 and move it up the treatment paradigm to talk about that it  
12 was lipid friendly, to, you know, solicit unsolicited  
13 questions. I mean, pretty early on.

14 Q. So I guess the question would be, Ms. Graham, why did you  
15 stay?

16 A. You know, that's a great question, and I think for a  
17 couple reasons. Right?

18 I had been in HIV for a really long time. And I'm not  
19 a doctor and I'm not a nurse, but I felt very compelled and  
20 passionate about people that were HIV positive and living with  
21 HIV. So I felt very committed to the patients. I mean, you  
22 know, a lot of us in our district had spent several years  
23 working with the community.

24 And, you know, it was not allowed at that point, but  
25 prior to that, meeting with patients and getting to know

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1 patients and, you know, being part of a team with these  
2 doctors that were treating these patients. Again, you know,  
3 it was my way to help. I'm not a doctor. I'm not a nurse.  
4 But I felt I was helping these patients. I was trying to help  
5 them extend and enhance their lives.

6 So it was just -- you know, it was kind of a -- I just  
7 felt compelled.

8 Q. Did you eventually leave Janssen?

9 A. I did.

10 Q. In 2011?

11 A. I did.

12 Q. Why did you leave?

13 A. I left because I was moving to Colorado.

14 Q. Okay.

15 At some point, Ms. Graham, after leaving the company,  
16 did you have time to reflect on what you had seen during your  
17 years there?

18 A. Yes.

19 Q. And what did you do?

20 A. I went to the DOJ.

21 Q. Explain that to the jury, please.

22 A. You know, I would -- went through kind of reliving it all  
23 and just felt, you know, how bad it was and how -- I kind of  
24 felt dirty, and I felt like I needed to do the right thing.

25 Q. So you live with a gentleman named Mark Wilhelm?



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- 1 A. I do.
- 2 Q. Who is Mark Wilhelm?
- 3 A. Who is he? Like, from at Janssen?
- 4 Q. From his position at Janssen.
- 5 A. He was the key account director.
- 6 Q. And you've been in a long-term relationship with
- 7 Mr. Wilhelm?
- 8 A. I have.
- 9 Q. And you met at Janssen?
- 10 A. Actually, we met at Roche.
- 11 Q. Oh, so you met before Janssen.
- 12 A. Yes.
- 13 Q. Did Wilhelm join you in reporting this to the Department
- 14 of Justice?
- 15 A. He did.
- 16 Q. So there was some argument this morning, Ms. Graham, that
- 17 you're sort of friends with a series of people. I want to
- 18 talk to you about that.
- 19 A. Okay.
- 20 Q. You're friends with Ms. Penelow.
- 21 A. I am.
- 22 Q. Okay.
- 23 You met Christine Brancaccio during your time at
- 24 Janssen?
- 25 A. Correct.

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1 Q. Okay.

2 Let's talk about -- did you learn at some point that  
3 Ms. Brancaccio and Ms. Penelow had filed this action with the  
4 Department of Justice?

5 A. Yes, at some point because we were told that we were not  
6 the first to file.

7 Q. Okay.

8 So you and Wilhelm actually filed your own claims.

9 A. We did.

10 Q. And that was under seal?

11 A. Yes, it was.

12 Q. And Ms. Brancaccio and Ms. Penelow's case was, for a  
13 period of time, under seal.

14 A. That's my understanding.

15 Q. Did you coordinate with Ms. Penelow and Ms. Brancaccio in  
16 the lawsuits?

17 A. No, I didn't even know that they had it. I didn't know  
18 that they had a case. I mean, I was calling Jessica. I was  
19 sending her text messages. I was sending her cards. I was  
20 sending her letters, and I didn't hear back from her. And I  
21 was -- kept thinking, what did I do? Please tell me what I  
22 did. Like, let me know what I did because I want to make it  
23 right.

24 And I just never heard from her, for years.

25 Q. Is it true, is it fair that you filed your own lawsuit

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1 with the Department of Justice not knowing that Ms. Penelow  
2 had done the same?

3 A. That is correct.

4 Q. At some point, were there attorneys for Ms. Penelow and  
5 Ms. Brancaccio that reached out to you in this case?

6 A. Yes.

7 Q. And they came and talked to you and asked if you had seen  
8 the same information?

9 A. Yes.

10 Q. And was there an attorney that asked you questions and  
11 wrote down what you told them?

12 A. That they wrote down the question?

13 Q. They wrote down the answers to --

14 A. Yes. They wrote down the answers, yes.

15 Q. Were you asked at some point to sign a declaration?

16 A. Yes.

17 Q. And was that declaration true?

18 A. Yes.

19 Q. Did you have a chance to review it?

20 A. Yes.

21 Q. Was it accurate?

22 A. Yes.

23 Q. Was it consistent with the lawsuit that you had filed  
24 years earlier with the Department of Justice?

25 A. Yes.

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1 Q. And Ms. Penelow never asked you to file a lawsuit, did  
2 she?

3 A. No.

4 Q. Ms. Brancaccio never asked you to file a lawsuit?

5 A. No.

6 Q. In fact, tell the jury, from the time you left employment  
7 at Janssen in 2011, when was the first time that you saw  
8 Ms. Penelow in person?

9 A. I think I've seen her once since 2011 to now, other than  
10 yesterday when I saw her for the first time, and I have not  
11 seen Christine since I left Janssen.

12 Q. When was the first time you saw Ms. Brancaccio since you  
13 left Janssen?

14 A. Yesterday.

15 Q. Do you know a gentleman named Joe Holshoe?

16 A. I do.

17 Q. Who is that?

18 A. He was in, I think -- like, the New England area. He was  
19 a sales rep.

20 Q. Did you coordinate your testimony in the declaration with  
21 Mr. Holshoe?

22 A. No, I haven't spoken to him since either -- I don't know  
23 who left first. I think it was him. I think he got fired. I  
24 don't really remember, but I haven't talked to him since one  
25 of us left Janssen.

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1 Q. Now, I understand you also know Sara Strand?

2 A. I do.

3 Q. And who is she?

4 A. She was the regional director at Janssen, and I have  
5 worked at a couple different companies for her -- with her.

6 Q. Did you coordinate any testimony with Ms. Strand?

7 A. I didn't even know that she was a witness until, you  
8 know, relatively recently.

9 Q. Did you talk to Ms. Strand before you went to the  
10 Department of Justice with your allegations?

11 A. No. I was not in touch with her for a few years.

12 Q. Did you -- I may not have asked this. Did you talk to  
13 Mr. Holshoe --

14 A. No.

15 Q. -- about going to the Department of Justice?

16 A. No.

17 Q. Do you know a gentleman named Matthew Grooms?

18 A. I do.

19 Q. Who is that?

20 A. He was a sales rep, I believe, in Kansas City or  
21 St. Louis or something like that.

22 Q. Is he your friend?

23 A. An acquaintance. I knew him at -- when I worked at  
24 Janssen.

25 Q. When was the last time you saw Mr. Grooms?

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1 A. The day one of us left Janssen. Again, I don't remember  
2 who left first, but it's not somebody that I keep in touch  
3 with.

4 Q. Have you been in touch with Mr. Grooms about your  
5 testimony today?

6 A. No.

7 Q. Have you coordinated any testimony in your declaration  
8 with Mr. Grooms?

9 A. No.

10 Q. Did you contact Mr. Grooms and ask him for advice or tell  
11 him you were going to go to the Department of Justice?

12 A. No.

13 Q. Ms. Graham, there are emails in this case, and you'll  
14 probably see some when counsel for Janssen talks to you, where  
15 you had put disclaimers on them saying, Remember we follow the  
16 law.

17 A. Yes.

18 Q. Explain to the jury what was happening there.

19 A. Well, it was -- it was essentially a disclaimer. I mean,  
20 it was really -- it was meant as a defense for something  
21 exactly like this. It wasn't meant as a deterrent or to  
22 discourage that behavior.

23 Q. Was there a preference when you were at Janssen for oral  
24 conversations or verbal conversations that were putting things  
25 in email?

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1 A. Absolutely, yes.

2 Q. Why?

3 A. Because then there is no documentation to support it.

4 Q. Why is that important?

5 A. Because a lot of those conversations were around illegal  
6 marketing practices or, you know, being tracked on MIR forms,  
7 you know, taking people off the speaker bureau because they  
8 weren't prescribing. So, I mean, you don't want to have a  
9 paper trail of that kind of behavior.

10 Q. Are the things that you talked about today things that  
11 you brought to the attention of the Department of Justice?

12 A. Yes.

13 Q. Why did you go there and report them?

14 A. Actually, Mark and I were moving, and we had found, you  
15 know, all his notes and stuff and my notes, and, you know, we  
16 had just sat down and talked about it, and I was like, Oh,  
17 just throw them away. I want to forget about it.

18 But then, you know, when we really sat down and talked  
19 about it, and it just really brings up a lot -- I'm not trying  
20 to be dramatic. It brings up a lot of emotion about how I  
21 felt there and how I felt about it and what -- how I felt like  
22 I was asked to compromise my integrity.

23 And I still feel upset about it. So, you know, we  
24 decided that we didn't feel comfortable doing the right thing  
25 when we were there, but maybe we could do the right thing now.

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1 Q. Why didn't you feel comfortable doing the right thing  
2 when you were there?

3 A. Because I -- first of all, I don't -- I don't think that  
4 the compliance hotline was completely anonymous. I also -- I  
5 knew of an instance where a gentleman in Arizona went to human  
6 resources and complained about something, and then he was  
7 fired a couple weeks later.

8 You know, what they did was kind of go through his  
9 expense reports and try and find red flags and trying to find  
10 a reason to get rid of him.

11 So I felt like there was a lot of potential for  
12 retaliation, and I didn't want to lose my job.

13 Q. And so you moved to Colorado, you talked to Mark and then  
14 you decide to file with the Department?

15 A. Yes.

16 Q. Okay. So just to make sure this is clear, because I know  
17 this timeline gets a little bit confusing, Ms. Penelow and  
18 Ms. Brancaccio filed this suit before you did?

19 A. Yeah. I don't even know when they filed their suit.

20 Q. But you found out later that they filed it before you  
21 did?

22 A. I did.

23 Q. And you didn't know when you filed that they had?

24 A. That is correct.

25 Q. Then because they -- under the law they had filed before



GRAHAM - DIRECT - RUSS

1 you, there was something called the first-to-file bar?

2 A. Yes.

3 Q. And so you couldn't proceed with your case?

4 A. Yes.

5 Q. And your case doesn't exist anymore?

6 A. No. It's under seal.

7 Q. But you had brought that before you knew about this case?

8 A. That's correct.

9 Q. Do you have any financial interest in the outcome of this  
10 case?

11 A. No.

12 Q. Do you stand to make a profit or make any money  
13 whatsoever --

14 A. No.

15 Q. -- based on how this case turns out?

16 A. No.

17 MR. RUSS: If I could have one minute, Your Honor.

18 THE COURT: You may.

19 (Brief pause.)

20 BY MR. RUSS:

21 Q. Ms. Graham, thank you so much for your time this  
22 afternoon. I know I had a lot of questions.

23 MR. RUSS: I'm going to pass the witness at this  
24 time, Your Honor.

25 THE COURT: All right. Thank you, Mr. Russ.

1           Ms. Brown, do you want to -- I have an issue I want to  
2 address with counsel. Do you want me to do that after you  
3 start cross-examination, or do you want to -- do you want me  
4 to address that now?

5           What is easier for you because I don't know how much  
6 you have on the cross-exam.

7           MS. BROWN: I have a fair amount, Your Honor, and I  
8 need to sort of hand out binders, so we could do it now. It's  
9 just as easy.

10          THE COURT: So you'd like --

11          MS. BROWN: If you want to address the issue now,  
12 it's just as easy.

13          THE COURT: All right. Here's what I'm going to do,  
14 then.

15          Ma'am, you're on cross-examination, but it's  
16 technically going to begin tomorrow morning. I'm going to  
17 address a legal issue with the attorneys outside of earshot of  
18 the jurors, and we'll begin cross-examination in the morning  
19 because we only have about 15 minutes anyway.

20          All right. Let's do this: Ma'am, I want to instruct  
21 you, though, that you're on cross-examination. You can't be  
22 discussing your testimony with Relators' counsel.

23          And, Ms. Brown, you're okay, then, not to just start a  
24 few minutes now and proceed in the morning?

25          MS. BROWN: No problem.

1 THE COURT: Because I don't want to cut you off if  
2 there's some flow here, but you only have about 10 or 15  
3 minutes.

4 MS. BROWN: I'm happy to start in the morning,  
5 Your Honor. Thank you.

6 THE COURT: All right. So, jurors, I'm going to  
7 dismiss you for the day. Tomorrow morning, we'll begin,  
8 obviously, with the cross-examination of this particular  
9 witness, and we'll continue from there.

10 Just be mindful of the time. If you guys are here, I'm  
11 going to do my job to try to ensure we begin by 9:30, but  
12 that's really subject to all ten of you being here.

13 So just be mindful of that, and I'll make sure counsel  
14 is here well before then so we can address any issues in  
15 advance so that we don't hold you up.

16 So with that, let me excuse the jurors.

17 But, Counsel, remain. I do have an issue that I do  
18 want to address with you all.

19 THE DEPUTY COURT CLERK: All rise.

20 (Jurors exit courtroom.)

21 THE COURT: All right. Have a seat.

22 So maybe I'm missing this. So here is my concern.  
23 There was a motion in limine filed by Relators' counsel that  
24 precluded the defense from raising any issue about the  
25 Government failing to intervene in the case about what their

1 position was going to be on that.

2 And at no time in that briefing did you say, Oh, we're  
3 going to put a witness up and talk about the Department of  
4 Justice for half an hour.

5 Mr. Russ, that's what you just did on direct exam. So  
6 now you've left this appearance for the jury that Ms. Graham  
7 has gone to the Department of Justice. You've all gone to the  
8 Department of Justice, and that's hanging out there.

9 And I don't know if you've read the opinion, but the  
10 opinion said, if you open the door, I'm going to revisit this  
11 issue.

12 So I want to hear from the Relators' counsel first and  
13 then Janssen's counsel: How did you not open the door now for  
14 the defense to be able to get out, either on cross-examination  
15 or the defense would say, The Government didn't intervene in  
16 this case. The Department of Justice is doing nothing.

17 That's a concern because it's not like, when you file  
18 that motion, you were precluding the defense by saying, Well,  
19 we're going to elicit all of it, we're going to put this --  
20 this narrative in front of the jury, but we're going to  
21 prevent Janssen from answering it.

22 So I don't know who wants to speak to that. I know,  
23 Mr. Russ, it's your witness, but I don't know which counsel  
24 wants to speak to it, but I want to hear from you, and I want  
25 to have a sense of this before the cross-examination concludes

1 tomorrow, which now we're not starting, so it's even easier.

2 So do you want to address it, Mr. Marketos?

3 MR. MARKETOS: I can, Your Honor. Do you mind if we  
4 tag team a little bit because it's two -- it's two issues, and  
5 so if -- I may high-five Josh in a minute.

6 THE COURT: All right. That's fair. But let's just  
7 have one issue at a time, though.

8 MR. MARKETOS: Yes. So -- so the point the --  
9 they're talking about all of these witnesses, and they've all  
10 got some bias, and the point to address on her filing of a  
11 different separate DOJ lawsuit is that you have to go to the  
12 DOJ lawsuit and that it remains under seal and that she made  
13 these allegations years earlier, not knowing about Ms. Penelow  
14 and Ms. Brancaccio, not knowing about this case being under  
15 seal.

16 They're making these allegations that these are all  
17 their friends. You heard it in opening, right, that it was  
18 just brought up. They were -- they're colluding. The point  
19 about asking those questions about these witnesses is  
20 Ms. Graham made these allegations years earlier, not knowing  
21 about these --

22 THE COURT: Well, that may have been the point, but  
23 you've also now -- you don't see what narrative you just put  
24 before the jury?

25 MR. MARKETOS: I don't necessarily agree with it,

1 Your Honor, but I know where they're going. If they want to  
2 go there, they can go there.

3 THE COURT: No. Because -- I'm not saying that. I'm  
4 saying it's your witness that brought it out.

5 MR. MARKETOS: Right.

6 THE COURT: I promise you if Janssen had called a  
7 witness and this issue hadn't been brought up and they said,  
8 Yeah, the Department of Justice was aware of this case and  
9 they said, bye, we don't want to be a part of this, I would  
10 have blasted them for doing that because I have an order that  
11 says they're precluded from doing that.

12 But I also said in the order that -- I think it  
13 literally says it verbatim in my opinion, but it will revisit  
14 this issue at trial should Relators present evidence or  
15 argument at trial that, quote/unquote, opens the door as to  
16 the Government's involvement or lack thereof.

17 And here you are saying -- and by the way, I understand  
18 that one purpose might have been, Hey, look, Judge, what we're  
19 trying to do is bolster the credibility of this witness, that  
20 prior to her testifying, she went to the Department of Justice  
21 separate and apart from the Relators in this particular case.

22 MR. MARKETOS: Right.

23 THE COURT: But you've done more than that. I  
24 understand that might be the purpose, but you also now have a  
25 witness saying, I went to the Department of Justice, these

1 folks went to the Department of Justice and now we'll just cut  
2 it off there. Let the jurors figure out now what the DOJ is  
3 doing.

4 Maybe they're investigating Janssen for criminal  
5 conduct. Maybe they're investigating for this. Maybe that  
6 case is still pending.

7 This is the narrative that you guys have now closed out  
8 before the jury, and so my question to you all before I hear  
9 from somebody on the other side is: You don't think you  
10 opened the door?

11 MR. MARKETOS: Your Honor, every witness who is a  
12 Relator testifies that they took their complaints to the  
13 Department of Justice. They have to in any declined case.

14 If you're standing in the shoes of the federal  
15 Government, you don't just file as a plaintiff.

16 So every single Relator has to testify that he or she  
17 took their complaints to the Department of Justice. We don't  
18 tell the jurors what the process is thereafter. That's the  
19 issue with respect to a declined case. But you can't just be  
20 a Relator. You have to tell the jurors that you went to the  
21 Department of Justice to be a Relator.

22 THE COURT: No, that's -- and maybe if the testimony  
23 was as specific and as procedural as that of what you just  
24 articulated, I might not have the same concern. But that's  
25 not exactly what I heard, although I'll look at the

1 transcript.

2 I mean, I have a live feed, so I'm watching it, but I'm  
3 saying, I'll review it this evening to get an exact sense of  
4 all the things that this witness said.

5 MR. MARKETOS: Sure.

6 THE COURT: So are you telling me that your  
7 recollection -- I'll have to look at it this evening, right?  
8 I'm not making a decision here and now. I still want to hear  
9 from Janssen's counsel.

10 But is it your opinion that the testimony that was just  
11 elicited is solely procedural, that this is what is required  
12 of the Relator? You have to go to the Department of Justice,  
13 and, therefore, that's what was done?

14 MR. MARKETOS: Yeah, go ahead.

15 MR. RUSS: Yeah. Your Honor, if I can, I was trying  
16 to elicit --

17 (Stenographer clarification.)

18 MR. RUSS: Your Honor, I was trying to elicit, and I  
19 think it came out in the transcript, that Ms. Graham filed and  
20 then dismissed the case, right, not that it's pending, that  
21 she couldn't proceed.

22 THE COURT: Well, I thought you also -- and you can  
23 correct me if I'm wrong. Is that the reason why that case no  
24 longer exists is because your Relators' case went first?

25 MR. RUSS: It was filed first.



1 THE COURT: Right.

2 MR. RUSS: Right. Separate and apart from any  
3 intervention suit or defamation, et cetera. That's not the  
4 case with hers. There was no decision. She dismissed it.

5 And so most of her discussion was the fact that she  
6 just got beat to the punch, not the Department of Justice  
7 investigating or still investigating or to insinuate anything  
8 other than the fact that they had these concerns and actually  
9 brought them to the Government, not internal compliance.

10 That's it. Not trying to elicit intervention, decision  
11 or investigation, any of that.

12 THE COURT: All right. Let me hear from Janssen.

13 MR. WYATT: Thank you, Your Honor. Geoff Wyatt for  
14 Janssen.

15 We have the same concern that the Court does. There  
16 was a procedural aspect of what was discussed, that's true,  
17 but there was definitely also a theme of you went to the  
18 Department of Justice. That was the question.

19 It wasn't speaking about the declarations. Was it  
20 consistent with the lawsuit you had filed years earlier with  
21 the Department of Justice, which is clearly indicating that  
22 there's some sort of alignment between -- which is exactly  
23 what we were concerned about, that they would come in here,  
24 that they would try to present this case as though it were on  
25 behalf of the Department of Justice.

1           And the effect of this testimony that we just heard is  
2           that, yes, she was working with the Department of Justice on  
3           very similar claims, and this case, which she is not a party  
4           in, is a natural continuation of that exact same issue that  
5           she raised with the Department.

6           It was also -- it was in opening, and we haven't raised  
7           it yet because we wanted to see where this was going to go,  
8           but it was said in opening that these are the Government's  
9           claims that are being prosecuted, and Relators, quote, stand  
10          in the shoes of the Government for purposes of this case.

11          We really are now put in the position of having to  
12          defend this as though it is a case either being prosecuted by  
13          or investigated by -- to this day by the Department of  
14          Justice, and that's not true.

15          And, in fact, one of the things that I believe is the  
16          case about the Eastern District of Pennsylvania case that we  
17          just heard about for the last half hour is that it was  
18          dismissed but only with the permission of the Government.

19          So, again, that part is not in the case, but it seems  
20          to me to be as relevant to responsiveness as the fact that the  
21          Government has not intervened.

22          So for both of those reasons, for all those reasons, as  
23          Your Honor just articulated, we do think the door is opened  
24          and that we should be able to --

25          THE COURT: Is that the language of the opening, by

1 the way? I know you didn't give the opening, Mr. Russ, but is  
2 that the language you used in the opening?

3 Again, I haven't reviewed the transcript. I've been  
4 sitting here with all of you, but I will. Is that what you  
5 said in the opening?

6 MR. WIRMANI: I think that is the definition of a  
7 qui tam lawsuit is that they stand in the shoes of the  
8 Government. They are prosecuting the Government's claim in a  
9 declined position.

10 I mean, there's no other way for a private litigant to  
11 get to this point unless they're prosecuting the Government's  
12 claim. By definition they suffered no injury here. This is  
13 the Government's injury, and they are prosecuting it.

14 And every time these cases are tried, this issue comes  
15 up. The intervention decision is always off limits because  
16 nobody knows why the Government declined the case. We have  
17 not suggested that the Government is somehow in the background  
18 investigating.

19 THE COURT: Well, that's the question, right?

20 MR. RUSS: And I'm thinking --

21 THE COURT: And that's what I'm getting to. And, by  
22 the way, I'm not going to be able to decide that now sitting  
23 here. I'm issue spotting it for you all because tomorrow  
24 morning I will decide it, right?

25 So that's going to be the issue. So, by the way, I

1 appreciate both sides. I appreciate the arguments. I'm issue  
2 spotting it. I'm not saying I've decided whether it's crossed  
3 a line or not, but it's a concern. It's a red flag that I'm  
4 raising for all of you.

5 So here's -- here's what I suggest: I'm going to  
6 review -- well, I'm going to review the opening and the direct  
7 exam now. I'm going to review both in conjunction, and then  
8 why don't we discuss this in the morning.

9 That gives you time to just -- to look at it and say,  
10 Judge, we've looked at it. We don't think we crossed any line  
11 other than what procedurally is accurate here. We're not  
12 implying or we haven't insinuated in any sort of way that the  
13 Government is still in this thing in some way, and I'll hear  
14 from Janssen if you feel differently.

15 But why don't we do that after you've all reviewed  
16 specifically what has been said because, look, all of  
17 recollections may be slightly different, and I'm not convinced  
18 my recollection is a hundred percent accurate.

19 But while it was happening, it was raising some red  
20 flags for me, so that's -- I'm sorry, go ahead.

21 MR. WIRMANI: Just one thing along those lines,  
22 Your Honor.

23 THE COURT: Yeah.

24 MR. WIRMANI: Ms. Brown repeatedly said during her  
25 opening that the Government was made aware of this, and they

1 continued to pay claims. The Government was made aware of  
2 this and implied they haven't done anything.

3 So I don't think that we've opened the door. If  
4 anything, they've pushed.

5 THE COURT: I don't know if that's in the same  
6 context. I'm not even sure those two things -- it's like  
7 apples and bananas, but I'll look at that as well. If you  
8 think that Janssen has brought up the Government, I think it's  
9 in a completely different context, but I'll also look at the  
10 opening from Ms. Brown, if you think that that's somehow  
11 relevant.

12 MR. RUSS: Yeah. Your Honor, if I may, there was one  
13 reference by Ms. Brown in the opening about this memo that was  
14 given to the Department of Justice from our clients, opening  
15 up this 20-page idea.

16 I didn't even touch that with the screen. I wasn't  
17 talking about what my clients did with the Department of  
18 Justice, just that she reported her case. Hard stop.

19 They brought that up in the opening, but you're going  
20 to see this memo with the Department of Justice laying out  
21 their claims. They opened that door. I certainly wasn't  
22 trying to open the door further to any defamation decision,  
23 and the case law is pretty clear that we're not trying to  
24 mitigate or figure out why the Department what it liked, what  
25 they didn't like, why they decided it was resource-based. We

1 don't have the answer to that.

2 THE COURT: All right. I'll take a look -- like I  
3 said, I'm going to take a look at the openings and the direct  
4 exam of Ms. Graham, and then why don't we revisit this in the  
5 morning, but expect that I'm going to want to chat about this  
6 tomorrow at 9:00.

7 Ms. Brown?

8 MS. BROWN: I just want to add one thing, Your Honor.  
9 The memo was raised, and this entire discussion took place  
10 when the slide was up about continued payment by CMS, and this  
11 was a materiality point. That is one of the elements of their  
12 claims.

13 The Government is aware of these allegations, and the  
14 agency continues to pay. It's part of what's in the case.  
15 It's totally divorced from what Your Honor excluded, which was  
16 that the DOJ declined intervention here.

17 But by putting the EDPA case in, they have now created  
18 a whole narrative that behind the scenes the DOJ thinks this  
19 case has merit.

20 And so for those reasons, Your Honor, they have kicked  
21 open the door on this nonintervention. They have created this  
22 false narrative that somehow there is merit, and the  
23 Department of Justice believes so, and that's not true.

24 THE COURT: All right. I appreciate that.

25 Is there anything more? I mean, look, I'm going to

1 look at it. There's not much -- you guys can do the rest of  
2 these arguments tomorrow morning. No?

3 MS. BROWN: Yes.

4 MR. MARKETOS: Right. Just -- no. I will be very,  
5 very brief, Your Honor.

6 You can see what's happening is each side has an angle  
7 of an element of the case that they want Government-related  
8 matters to be introduced on, and each side is coming at it  
9 from a different angle, and they're saying, You opened the  
10 door on this.

11 They brought up the sending of a 20-page letter, memo,  
12 by our counsel, by Berger Montague, to the Department of  
13 Justice in opening.

14 And now the suggestion is that by virtue of discussing  
15 the process of a complaint to the DOJ being under seal, that  
16 the Relators have opened the door on something.

17 These are going to go back and forth, but in every  
18 qui tam case, the only thing I wanted to reiterate is, in  
19 order for the jurors to understand that the Relator is  
20 bringing the claims on before of the Government, they must  
21 have first gone to the DOJ. That doesn't open the door for  
22 the --

23 THE COURT: Look, I don't necessarily disagree with  
24 that representation if that's all that -- if that's all that's  
25 come out so far.

1 MR. WIRMANI: Sure.

2 THE COURT: So let me take a look at it. I  
3 appreciate the arguments from both sides. But I'll hear from  
4 you more after I think we've all collectively looked at the  
5 transcript.

6 Look, I may look at it and say, I don't know if it's  
7 gone too far, or you may look at it and feel differently. I  
8 don't know the answer to it. But I'm raising it now.

9 MR. WIRMANI: Sure.

10 THE COURT: And I wanted to raise it before  
11 cross-examination or at the very outset -- you know, if you  
12 had done 10 or 15 minutes, I would have addressed it, and you  
13 would have continued cross tomorrow.

14 But I thought it made more sense to speak -- excuse  
15 me -- before we conducted the cross.

16 But all right. So here's what I would anticipate.  
17 Expect that tomorrow morning when we huddle up in the morning  
18 that I'm going to want to talk about this issue. Okay?

19 And then I'll decide whether I think there's been a  
20 door opened or not.

21 What else? Before I adjourn you for the day, folks,  
22 anything more from the Relators? I don't know if there's  
23 anything more we need to chat about.

24 MR. MARKETOS: Not from us. I'm sorry.

25 (Brief pause.)



1 MR. MARKETOS: Do you want any submissions on this,  
2 Your Honor? I know that -- if you -- you might take a look at  
3 the briefing on the limine issue.

4 THE COURT: Yeah, I'll just go back to -- look, I'm  
5 not going to force you guys to put pen to paper tonight to  
6 deal with this issue. If you want to put your own notes  
7 together and just relay it orally tomorrow, I think that's  
8 sufficient.

9 I'll go back, I'll look a little bit more at the  
10 briefing for the motion in limine so you're not repeating  
11 yourselves, so...

12 MR. MARKETOS: Procedurally, Your Honor, if they said  
13 something was opened in opening, if we --

14 THE COURT: Well, actually, Janssen hasn't said that.  
15 I'm saying I have concerns about it because I addressed this  
16 issue prior to the trial. I also said but it's subject to you  
17 all maybe opening the door during the trial, right?

18 So here I am now saying, well, did you open it or not?

19 Now, obviously, I guess, Janssen's position is you did,  
20 but why don't we all look at the transcript to be a little  
21 more accurate about where we are?

22 MR. MARKETOS: Okay.

23 THE COURT: All right. But anything further --

24 MR. MARKETOS: No. Thank you.

25 THE COURT: -- before we adjourn just for the day?

1 Ms. Brown, anything from the defense side that we need  
2 to chat about unrelated to this or --

3 MS. BROWN: No, Your Honor. Thank you.

4 THE COURT: All right. We're adjourned for the day,  
5 but let's be on time tomorrow. 9:00 a.m. we're going to have  
6 to address this issue, at the bear minimum, unless something  
7 else comes up.

8 And then you have what? Ms. Graham is going to be back  
9 on cross, and then you're going to have --

10 MR. MARKETOS: Ms. Strand, Sarah Strand.

11 THE COURT: Do you anticipate -- look, we're behind  
12 schedule, apparently. We had two witnesses, we got through  
13 half of one. So are we on target to get through those, and  
14 will you need to line up somebody else tomorrow?

15 MR. MARKETOS: Yes, Ms. Nancy Bartnett is on notice  
16 that -- she's a Janssen witness that we're calling on cross.

17 THE COURT: All right. So Ms. Bartnett.

18 MR. MARKETOS: Actually -- yes.

19 THE COURT: What do you mean calling on cross? Or  
20 you mean you're going to --

21 MR. MARKETOS: Calling her adversely.

22 THE COURT: I got it. She's a hostile witness,  
23 right? So there's going to be leading questions. Is that  
24 real --

25 MR. MARKETOS: Yes, sir.

1           The point of telling you that is because it's their  
2 witness we scheduled. That was the only reason.

3           THE COURT: Okay. But just to be clear -- well, let  
4 me just talk about that for a moment, folks.

5           They're calling this witness. Ms. Brown, you don't  
6 intend to call this witness a second time, do you?

7           MS. BROWN: No. I assumed I'd be allowed to do my  
8 questioning now and then --

9           THE COURT: You will, right?

10          So I want to be very clear about any witness on both  
11 your sides. That witness gets called, I have the authority  
12 and I have the discretion to say, even if it's outside the  
13 scope of direct, I'm going to allow the cross-examination.  
14 I'm not bringing any person back to this courtroom twice.

15          So that goes for both sides. You call their witness,  
16 you start objecting to outside the scope, I'll tell you --  
17 yesterday I told you that I was going to allow that because  
18 we're not calling the witness back. And it would be the same  
19 thing for you folks, right?

20          But let's not see any of these names repeated on the  
21 defense case. I want to make sure that we're all on the same  
22 page.

23          Is there any objection to that, although I'm going to  
24 overrule it, but I want you to place your record?

25          MR. MARKETOS: Go ahead and object, Andrew.

1           No. Judge, no. This is how we anticipated it.

2           THE COURT: Yeah, I mean, just to keep this moving.

3 All right. So that's the -- be well, folks. I'll see you

4 tomorrow morning. We're adjourned.

5           THE DEPUTY COURT CLERK: All rise.

6           (Court concludes at 4:00 p.m.)

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FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE.

- - - - -

I certify that the foregoing is a correct transcript from  
the record of proceedings in the above-entitled matter.

I

/S/ Megan McKay-Soule, RDR, CRR      May 7, 2024

Court Reporter

Date

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